



Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

Kevin M. Burke  
Secretary

# *The Commonwealth of Massachusetts*

## *Department of Public Safety*

*Board of Building Regulations and Standards*

*One Ashburton Place, Room 1301*

*Boston, Massachusetts 02108-1618*

*Phone (617) 727-7532 Fax (617) 227-1754*

*TTY (617) 727-0019*

*www.mass.gov/dps*

Thomas G. Gatzunis, P.E.  
Commissioner

Gary Moccla, P.E.  
Chairman

Alexander MacLeod, R.A.  
Vice Chairman

Robert Anderson  
Administrator

Date: December 01, 2008

Name of Appellant: Timothy Nourse

Service Address: Nourse Farms  
41 River Road  
Whately, MA. 01093

In reference to: Nourse Farms  
41 River Road  
Whately, MA. 01093

Docket Number: 08-622

Property Address: Nourse Farms  
41 River Road  
Whately, MA. 01093

Date of Hearing: August 26, 2008

Enclosed please find a copy of the decision relative to the aforementioned matter.

Sincerely

**BUILDING CODE APPEALS BOARD**

Patricia Barry, Clerk

cc: Building Code Appeals Board  
Building Official

# STATE BUILDING CODE APPEALS BOARD SIGN-IN SHEET

Docket Number 08-622 Appellant Nourse Building Official Cerone  
Hearing Date 08-26-08 Hearing Time 11:00 a.m.  
Appeals Board Members MacLeod : Gale : Nunnemacher

PLEASE PRINT LEGIBLY

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
Tim Nourse	41 River Road Woburn, MA	413-665-2658
SEAFRIDE BOAT	114 PLEASANT ST, EAST HAMPTON, MA	413-529-9434
MICHAEL J. DUVAL	12 DEER RUN, HOLYOKE, MA 01040	413-455-7692
Jim Greene	239 #9 RD, Rowe, MA 01367	413-337-8438
Jim Hawkins	425 Union St Greenfield	413-772-2026 880123
Louise Vera	115 Liberty St. Springfield - DPS	413-736-3622
Carole Bailey	333 EAST ST. Room 102 PASTERS, MA 01201	413-442-6908
Jake Nunnemacher	BBBS	
Brian Gale	BBBS	
Alexander (Nurse)	BBBS	
Kathleen Barry	BBBS	

STATE BUILDING CODE APPEALS BOARD

OPENING STATEMENT:

Mr. Chairman:

The date is: August 26, 2008 the docket # is 08-622

The appellant is: Timothy Nourse, Nourse Farms

41 River Road, Whately, MA. 01093

The property involved is:

41 River Road, Whately, MA. 01093

The appeal is based on the provisions of the 6<sup>th</sup> Edition of the State Building Code  
relative to: (Section/Table)

Relief desired:

780 CMR 312

DECISION: (Please complete this section at the hearing).

The Building Official supported/opposed the appeal filing:

Board members voted to:

Grant Appeal

Deny Appeal

Reason for approval/denial: \_\_\_\_\_

The decision was \_\_\_\_\_ unanimous/ \_\_\_\_\_ objected to by: \_\_\_\_\_

Reason for objection: \_\_\_\_\_

Provisos (if any): \_\_\_\_\_

BOARD: \_\_\_\_\_

## State Building Code Appeals Board

### Summary to be filled out by Appeals Board Clerk

Pursuant to Docket no. (*insert Docket no.*) 08-622

Based on the following findings of fact/testimony:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

A motion was made by (*insert Board member name*) \_\_\_\_\_

A second was made by (*insert Board member name*) \_\_\_\_\_

The motion is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With the following conditions:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

The Board voted (to (*check one*) grant \_\_\_\_ or deny \_\_\_\_ the variance

from 780 CMR Sections (*cite all sections that apply*) 780 CMR 312

Members voting for the motion: \_\_\_\_\_

Members voting against the motion: \_\_\_\_\_

# STATE BUILDING CODE APPEALS BOARD

DOCKET NUMBER: 08-622

PROPERTY ADDRESS: 41 River Road, Whately, MA. 01093

APPELLANT: Timothy Nourse

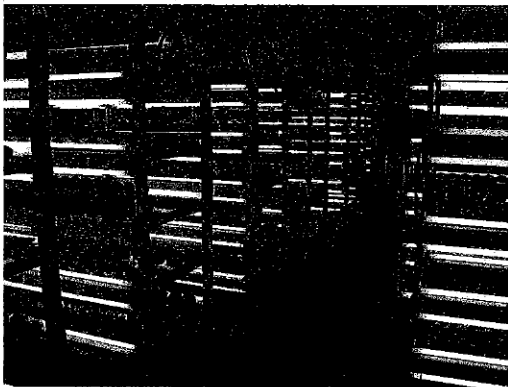
BUILDING OFFICIAL: James Cerone

(check one)

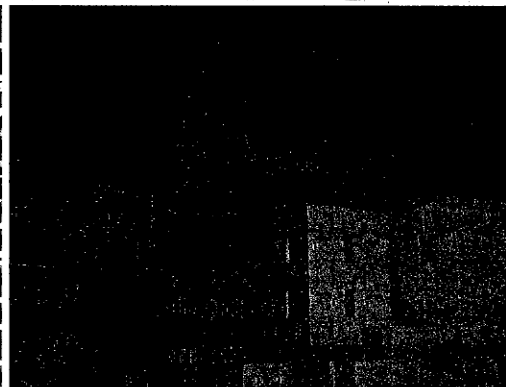
Item #	Item	Document Dated	Date Received	Appellant	Building Official
1.	Exhibit #1 - application		.	✓	
2.	Exhibit #2 - 29 pages of Info. from Appellant		8-26	✓	
3.	Exhibit #3 - Interpretation & photos (3 pages) total	8-26-08 12-23-07			✓
4.					
5.					
6.					
7.					
8.					
9.					
10.					

~~12~~

EXHIBIT #2  
(HEARING DATE 11/18/08)

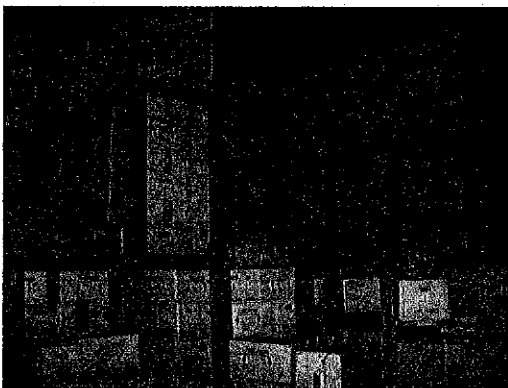


Laboratory

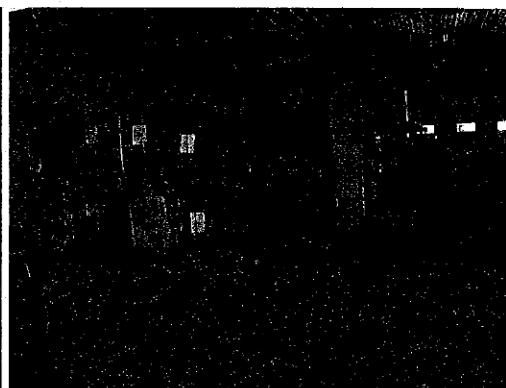


Cold storage with exposed foam walls

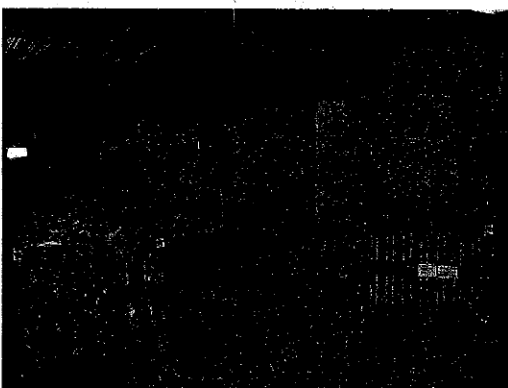
BRAS  
Meeting  
Nov. 18, 2008



Cold storage with exposed foam walls



Packing House addition



Packing House addition



Electrical room

Respectfully submitted,  
James Cerone  
Local Inspector

Exb # 2

# **STATE BUILDING CODE APPEALS BOARD**

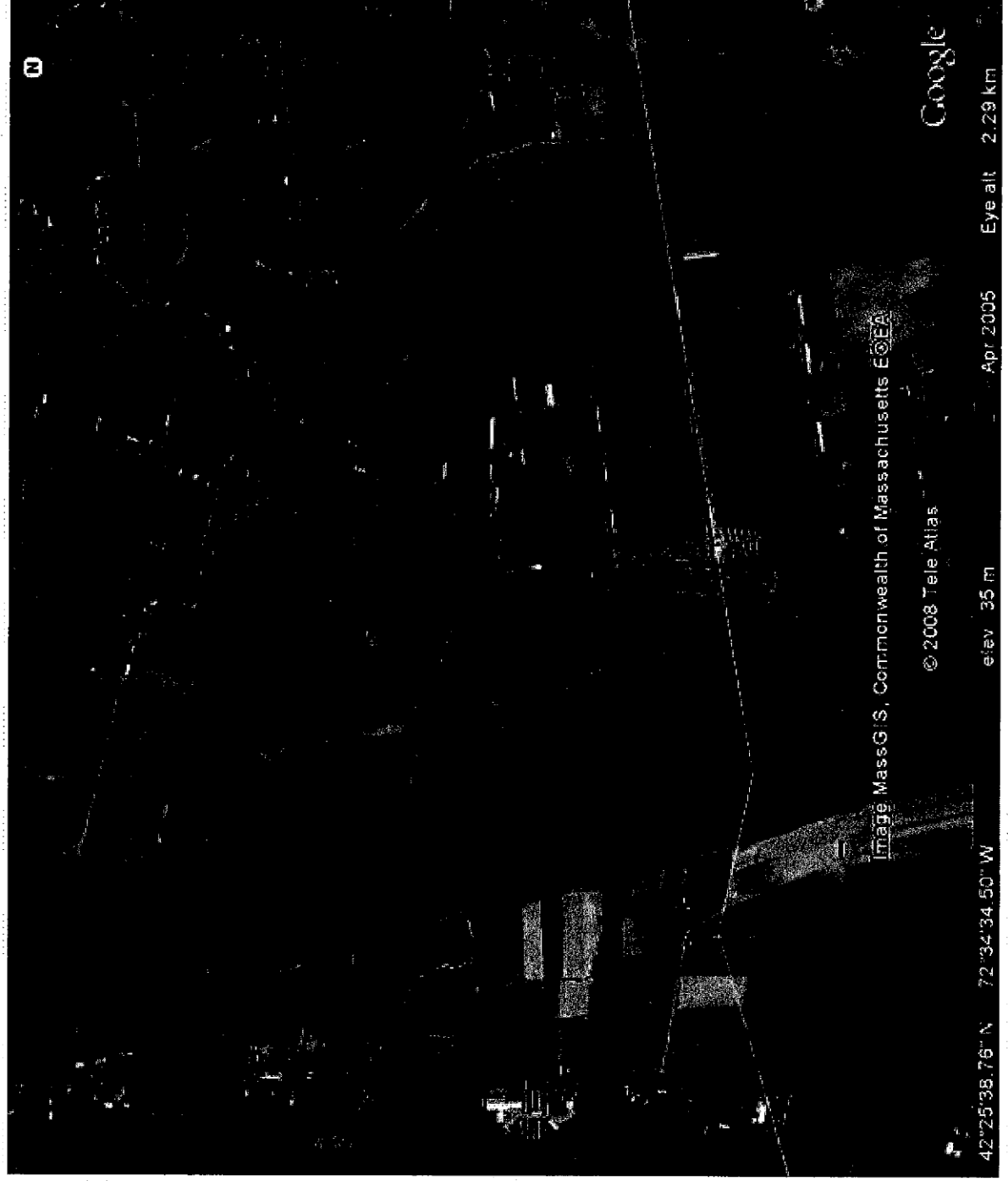
DOCKET NUMBER	08-622
PROPERTY ADDRESS	41 RIVER ROAD, WHATELY, MA 01093
APPELLANT	TIM NOURSE of NOURSE FARMS
BUILDING OFFICIAL	FRANKLIN COUNTY COOPERATIVE INSPECTION PROGRAM

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## **APPELLANT'S EXHIBITS**

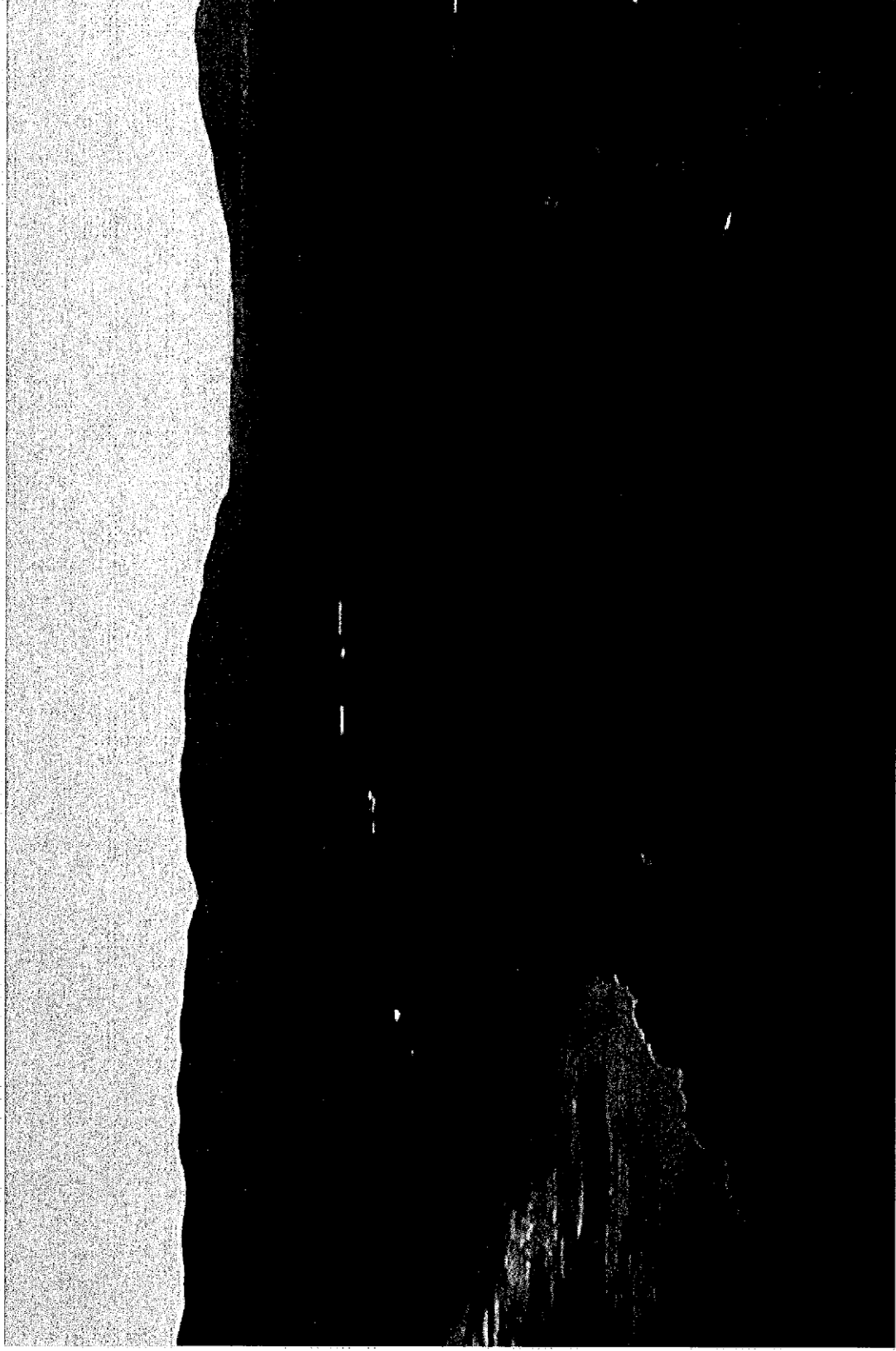
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# Nourse Farms, (left, center), is located in an Agricultural Region of the Pioneer Valley

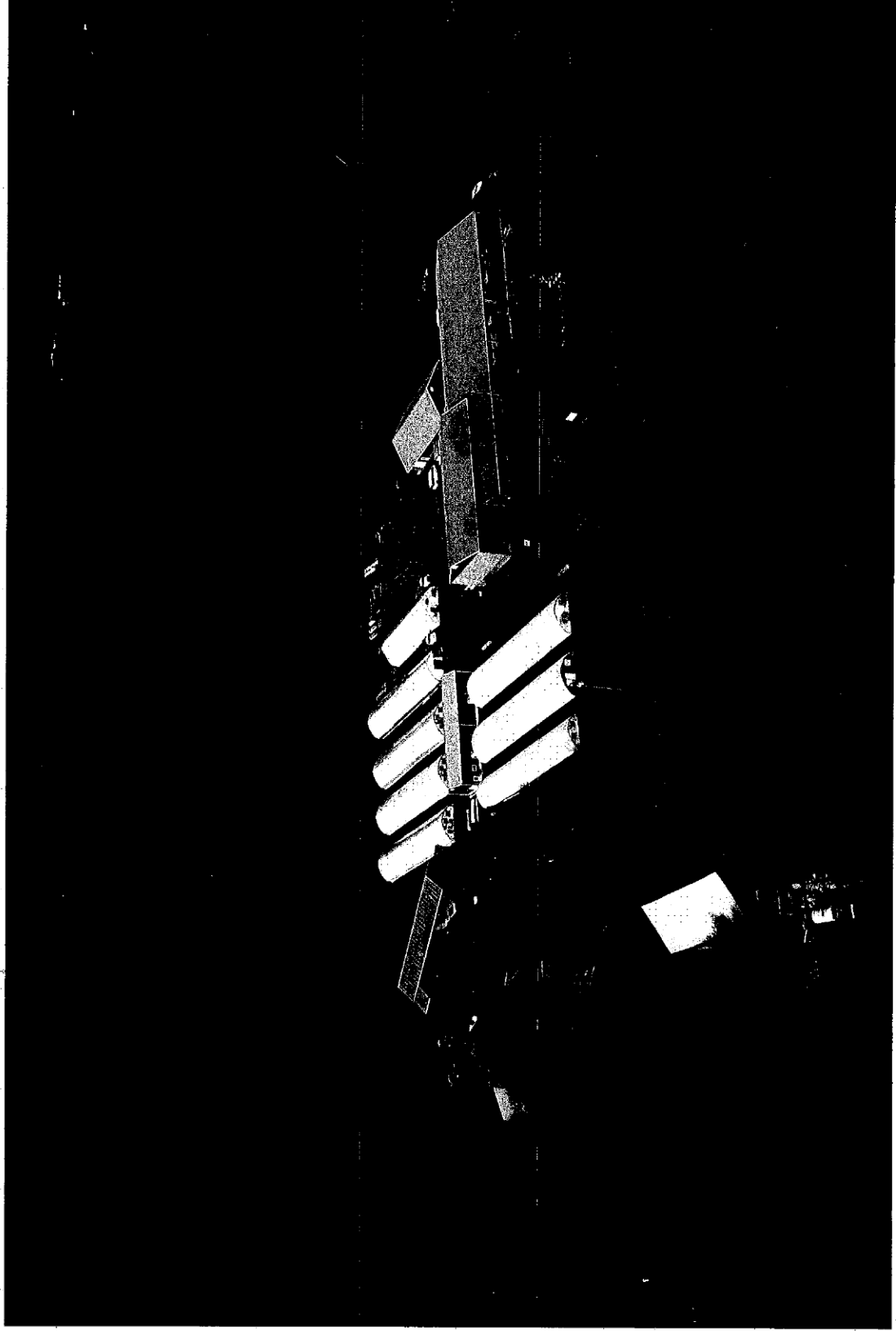




# **Nourse Farms Grows Berries and Bushes in the Fertile Soils along the Connecticut River**



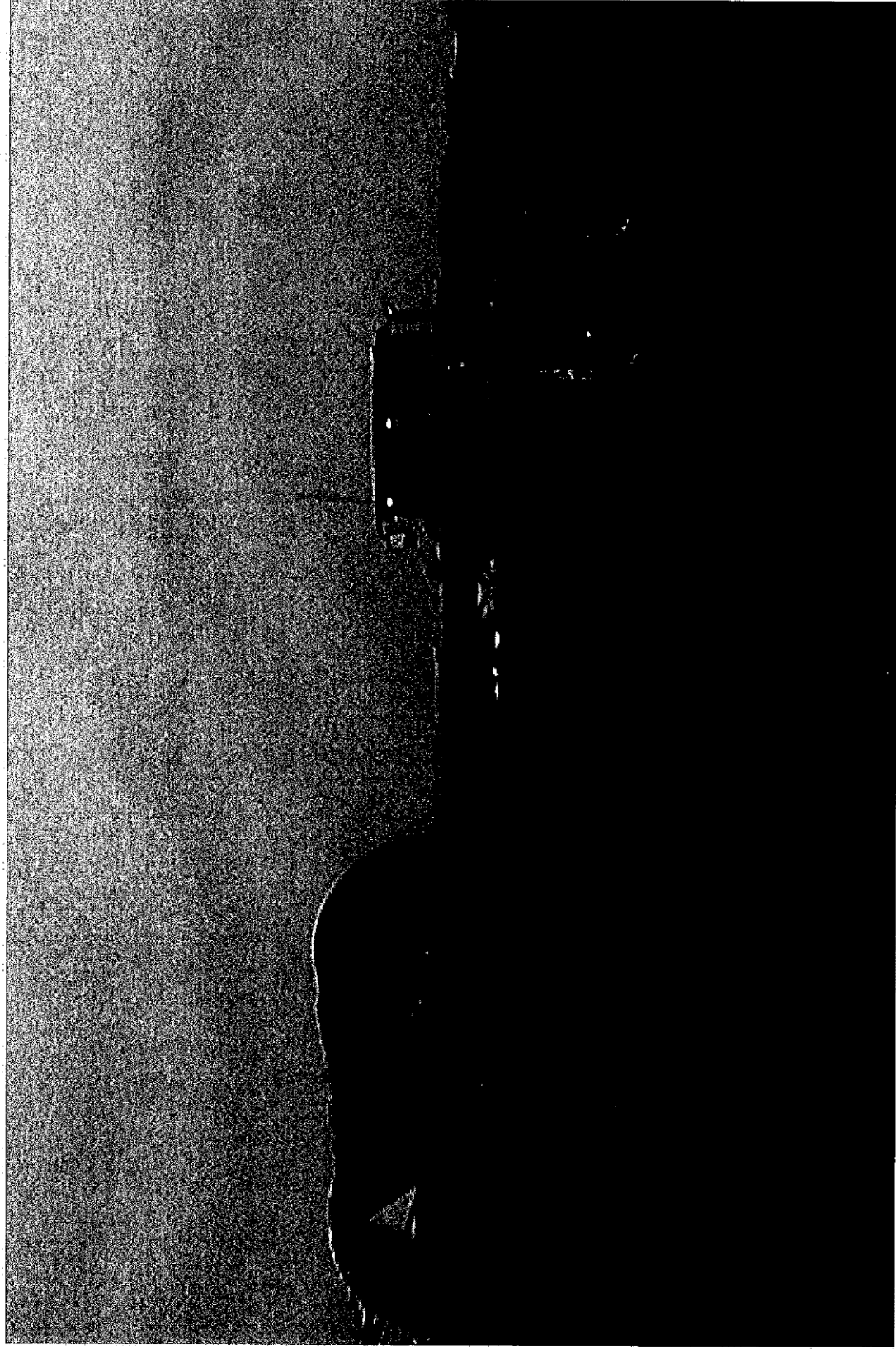
**The Nourse Home and Farm Buildings located at  
41 River Road in Whately, Massachusetts**



# **Cultivation and Growing of Berry Bushes at Nourse Farm Fields in Whately, MA**



# Harvesting Live Berry Bushes from Nourse Fields in Whately, MA



## Transferring the Live Bushes from the Digger to the Wagon



# Sorting the Live Berry Bushes in the Barn / Packing Area at 41 River Road, Whately, MA

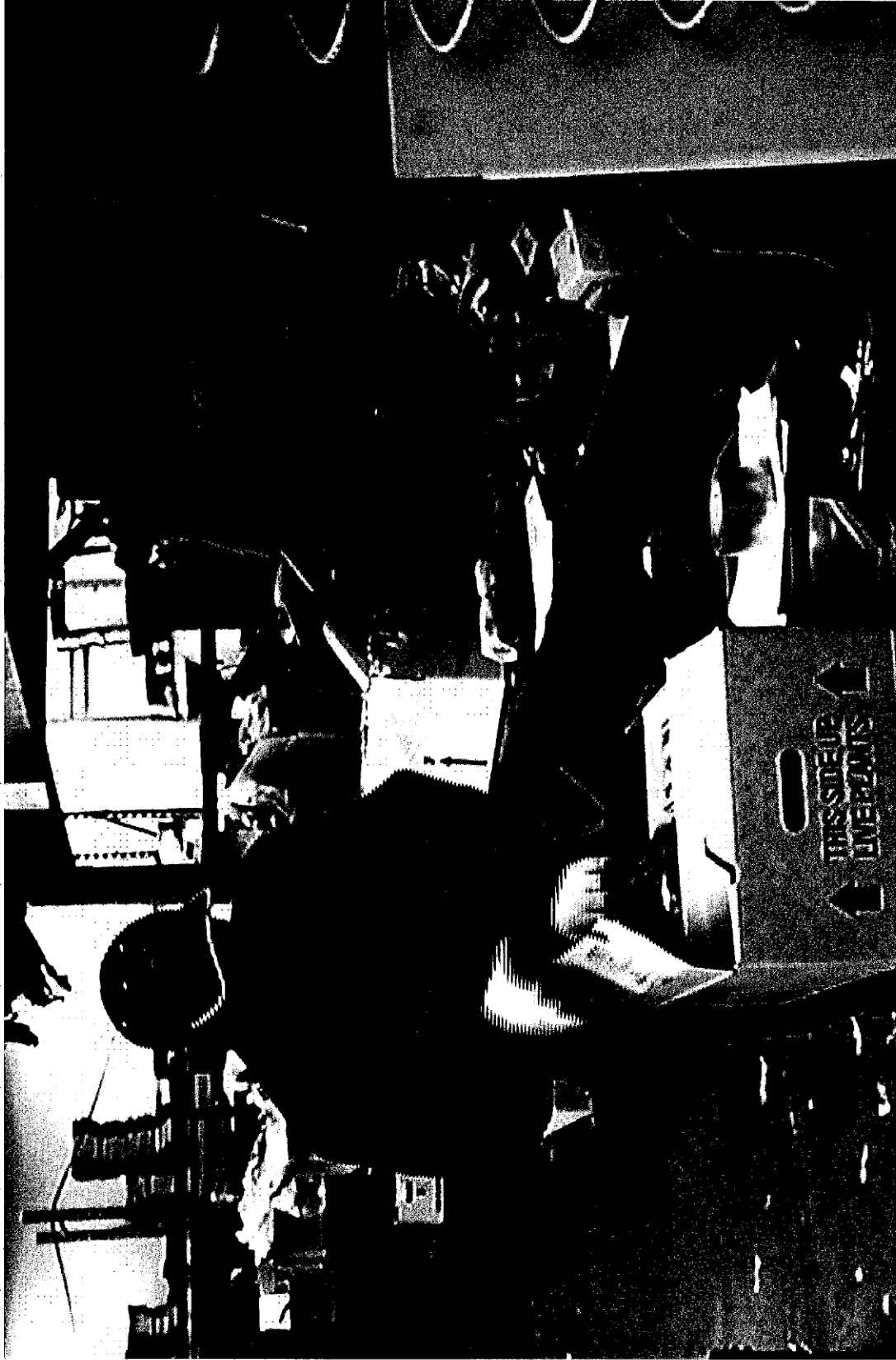


## The Live, (Dormant), Bushes are Refrigerated until Shipped



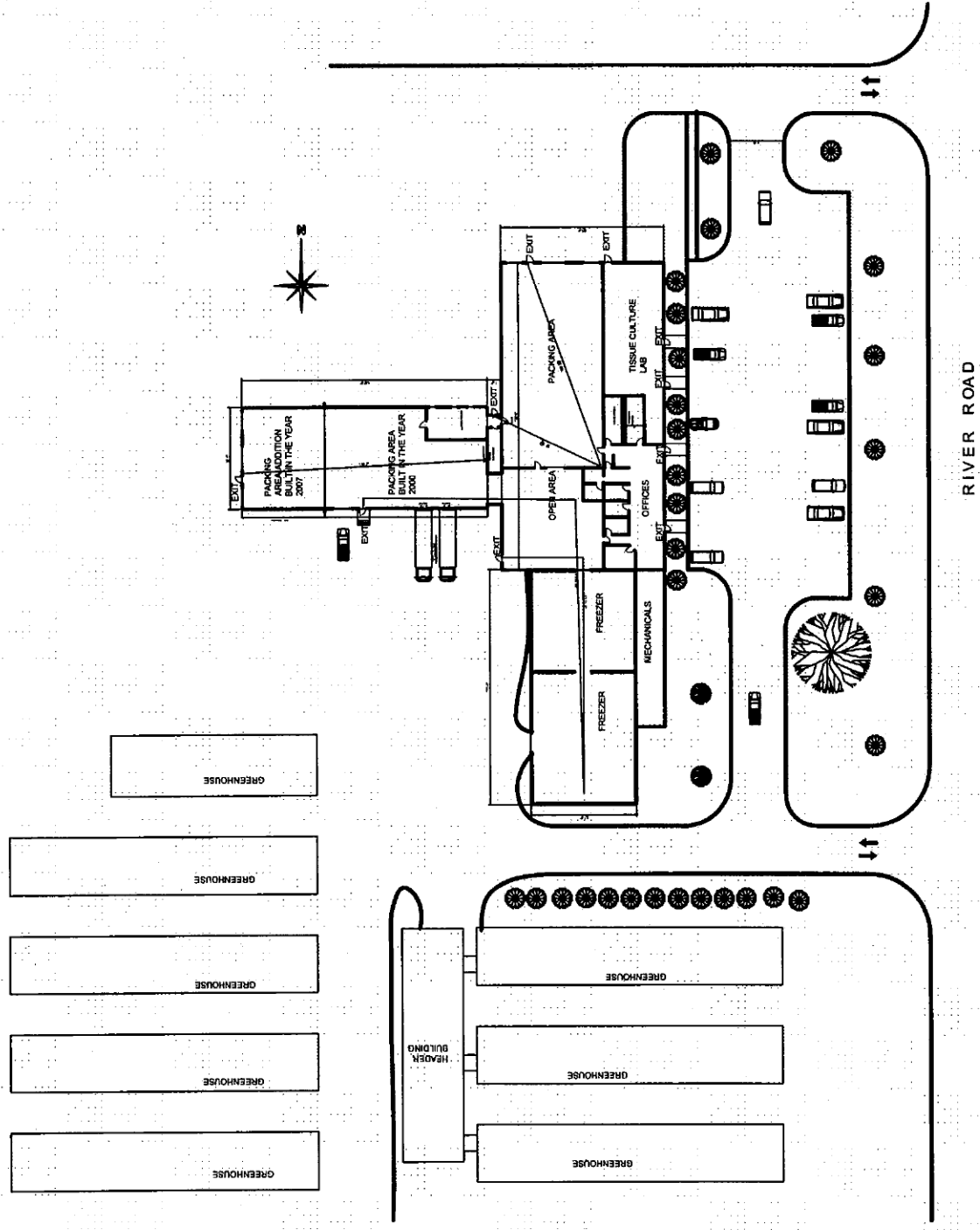
# Live Bushes are Packed & Shipped per Customer Orders

## From the Pack House

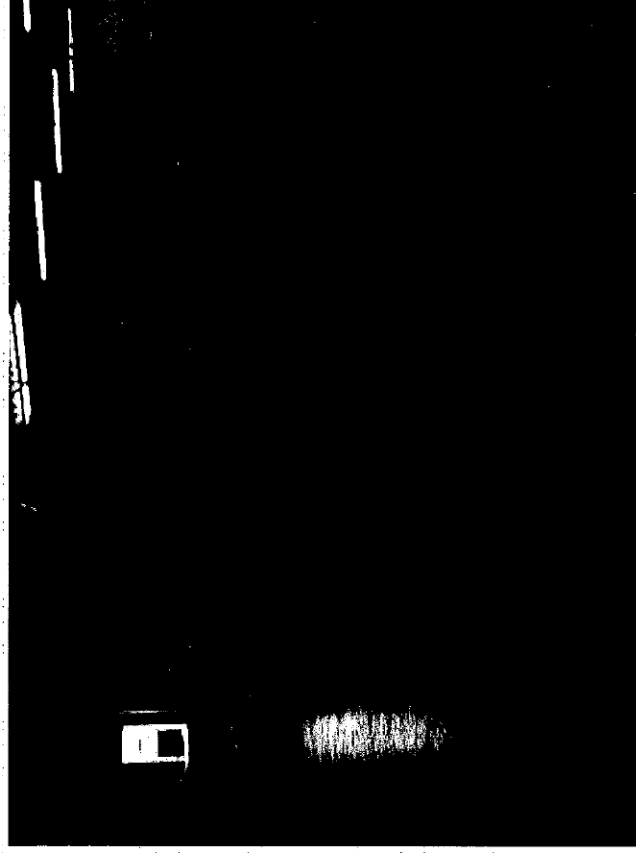
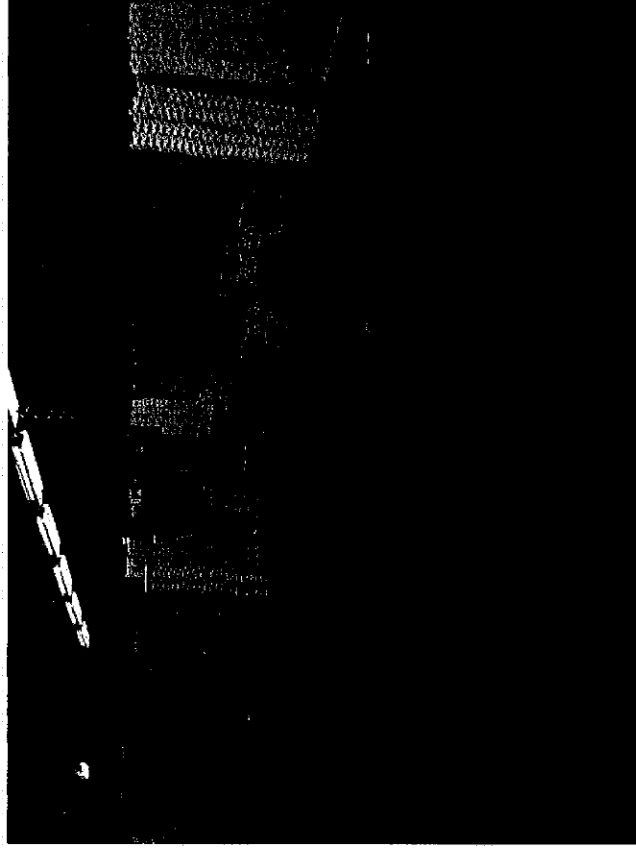




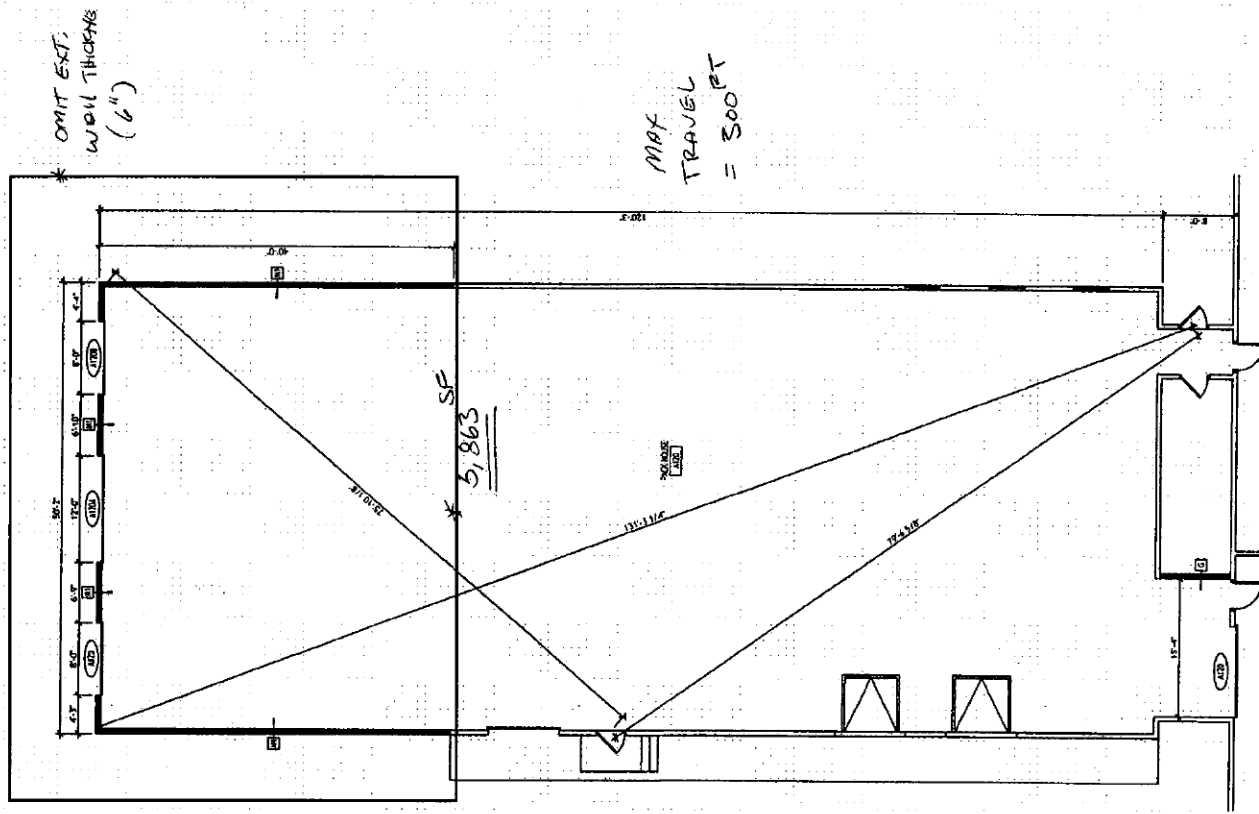
# Partial Site Plan Showing Agricultural Buildings at 41 River Road, (including the Pack House)



# The Existing 3,600 ft<sup>2</sup> Pack House / Shipping Area



# Detailed Floor Plan of Pack House Expansion



- Area within Red Border Depicts 2007 Expansion
- Remaining Area depicts the Existing Building which was built in 2000 / 2001
- Length of Travel to Exits in Compliance with 780 CMR Chapter 10 Means of Egress Requirements

# Application for Building Permit to Expand the Nourse Pack House at 41 River Road, Whately, MA, (Page 1)

Franklin County Cooperative Inspection Program—County Courthouse, 425 Main St., Ste. 25,  
Greenfield, MA, 01301-3393  
(413) 772-2026 Fax: (413) 773-8896 Website: www.fcchip.org  
Ashfield Bernardston Buckland Charlestown Conway Erving Gill Hawley Heath Leverett Leyden  
Shelburne Shutesbury Whately

Form: 2

RENOVATIONS/ADDITIONS/ACCESSORY STRUCTURES  
RESIDENTIAL BUILDING PERMIT APPLICATION

Note: This application is not for new single or two family homes, wood-  
stoves, swimming pools, or commercial projects.

Instructions: Applicant must fill out all of Section 1 and the appropriate sections for the specific type of project.

Section 1 Date: Assessor's Map# Lot #: Use Group: R-4 Const. Type: SB Other:

Zoning District: Code Edition To be used (From April 1, 2007 to October 1, 2007-Circle One): 6<sup>th</sup>

Town: WHATELY Site Address: 41 RIVER RD

Owner's Name: NOURSE, FARM Mailing Address: SEEDFIELD

Owner's telephone #: (H) 665-2656 (W) (Cell)

Contractor: NORMAN YOUNG Mail Address: 25 So. MILL RIVER-Town So DEERFIELD

Construction Supervisor # 025262 Expiration Date 5-23-08 Lic. #

Cont. Tel# 413-465-9255 Cell 773 666-1 Fax:  E-mail:

Estimated Cost: \$4000 Sq. Ft. Living Space (New): 2000 Sq. Ft. Other Space (New): 2000

Obtain the following signatures (where applicable) BEFORE submitting this application:

Fire Chief:  Date:

Board of Health:  Date:

(Shutesbury: all applications. All other towns: Bedroom addition only)

Conservation Commission:  Date: 11/9/07

(When any excavation done)

Inspector of Buildings:  Date: 11/19/07 Forw only

(After application submitted)

Explanation of work: "Be specific. For example: 'Install new bath and kitchen,' not 'Interior Renovations'"

The undersigned certifies that the above statements and all accompanying information are true to the best of their knowledge and belief. The owner of this structure and the undersigned agree to conform to all applicable laws of the town and state, and believe the work proposed to be in compliance with all zoning regulations and the Massachusetts State Building Code 780CMR, SECTION 10.0 OF THE MASS. BLDG. CODE REQUIRES EVERY APPLICATION TO BE SIGNED BY THE OWNER OF THE PROPERTY, OR BY AN AUTHORIZED AGENT. IF IT IS SIGNED BY AN AGENT, A CONTRACT SIGNED BY THE OWNER, OR LETTER OF AUTHORIZATION, MUST ACCOMPANY THE APPLICATION.

NORMAN YOUNG Date 11-12-07  
(Print Name of Owner or Authorized Agent) (Signature of Owner or Authorized Agent)

NOTE: CONTRACTOR AFFIDAVIT OR HOMEOWNERS LICENSE EXEMPTION MUST ALSO BE SIGNED ON PAGE 2

- This application for a Renovations/Additions/accessory Structure Building Permit was Submitted by Nourse Farms on November 9, 2007
- The Application was Approved but Limited to the "Foundation Only," on November 19, 2007.

# Application for Building Permit to Expand the Nourse Pack House at 41 River Road, Whately, MA, (Page 3)

- **Section 2: Roofing, Siding, Replacement Windows, (Check appropriate items)**  
Roofing: House \_\_\_\_\_ Garage \_\_\_\_\_ Other (describe) \_\_\_\_\_  
Any sheathing to be installed? Yes \_\_\_\_\_ No \_\_\_\_\_ Will existing roofing be stripped? \_\_\_\_\_  
If not, how many layers exist now? \_\_\_\_\_  
Siding: House \_\_\_\_\_ Garage \_\_\_\_\_ Other (describe) \_\_\_\_\_ Siding type \_\_\_\_\_ Number \_\_\_\_\_  
Replacement Windows: House \_\_\_\_\_ Garage \_\_\_\_\_ Other (describe) \_\_\_\_\_  
U value \_\_\_\_\_ (Maximum U value permitted is .44)
- **Section 3: Signs (Check appropriate items)**  
Size: \_\_\_\_\_ x \_\_\_\_\_ Word(s): \_\_\_\_\_  
Off-premise sign (fill out Section 5 plot plan) Site location: \_\_\_\_\_  
On-premise, attached to building \_\_\_\_\_ On-premise, free standing (fill out Section 5 plot plan)
- **Section 4: Note: Any new structure or addition requires a plot plan (See Section 5)**

## Please Check All Appropriate Items

- Accessory Structure \_\_\_\_\_ x \_\_\_\_\_ Storage Building (120ft or more) \_\_\_\_\_ x \_\_\_\_\_  
Garage \_\_\_\_\_ x \_\_\_\_\_ Addition to accessory structure \_\_\_\_\_ x \_\_\_\_\_  
Addition to dwelling \_\_\_\_\_ x \_\_\_\_\_ ☒ Agricultural Barn 40 x 50  
Renovation to dwelling \_\_\_\_\_ Chimney or Fireplace \_\_\_\_\_  
Renovation to accessory structure \_\_\_\_\_ Change of Use \_\_\_\_\_  
Demolition \_\_\_\_\_ Other (specify): \_\_\_\_\_

Provide 2 sets of plans showing:

- 1) Floor plan 2) Foundation plan or pier location 3) Cross section showing any of the following (if applicable):  
Carrying beams, floor joists, bearing walls, ceiling joists, rafters and collar ties. 4) Smoke detector locations

Fill out the following specifications appropriate to work being performed:

Foundation: Footing Size: 1' x 2' Depth Below Grade: 4' Drainage Type: \_\_\_\_\_

Foundation Type: Concrete Thickness: 10" Height: 8'

Height of unbalanced fill (from grade to slab): \_\_\_\_\_ Foundation Coating: \_\_\_\_\_

Framing: Lumber Grade and Specie (if other than #2 spruce/pine/fir): \_\_\_\_\_

Carrying Beam Type: \_\_\_\_\_ Size: \_\_\_\_\_ Column type: \_\_\_\_\_ Size: \_\_\_\_\_ Column span: \_\_\_\_\_

Joist - First Floor: \_\_\_\_\_ x \_\_\_\_\_ O/C \_\_\_\_\_ Span \_\_\_\_\_ Joist - Second Floor: \_\_\_\_\_ x \_\_\_\_\_ O/C \_\_\_\_\_ Span \_\_\_\_\_

Joist - Ceiling: \_\_\_\_\_ x \_\_\_\_\_ O/C \_\_\_\_\_ Span \_\_\_\_\_ Studding Bearing: \_\_\_\_\_ x \_\_\_\_\_ O/C \_\_\_\_\_ Wall Height: 12'

Roof Rafters: 2x8s O/C Horizontal Span 40' Roof Pitch: 8 in 12 Collar tie size: \_\_\_\_\_

IF TRUSSES ARE TO BE USED, YOU MUST SUBMIT TRUSS DESIGN, STAMPED BY A MASSACHUSETTS LICENSED ENGINEER, PRIOR TO FRAMING TRUSSES - 2" O.C. 1' x 2' FLOORING 2" O.C.

Sheathing: Floors \_\_\_\_\_ Walls \_\_\_\_\_ Roof \_\_\_\_\_ Roofing: Mem-A-Tic/Roof Ventilation Type: Vent Ridge

- Section 4 of the Application for a Building Permit Clearly Indicates that the Addition is being made onto an "Agricultural Barn."

# Building Inspector's Email Dated November 9, 2007

**Tim Nourse**

**From:** Michael Schafer  
[SchaferM@Schafer  
EA.com]  
**Sent:** Friday, November  
09, 2007 9:58 AM  
**To:** jcerone@frcog.org  
**Cc:** Tim Nourse  
**Subject:** Re: Nourse Farms  
expansion

Submittals for the Nourse Farms expansion. As the building contains more than 35,000 cu. Ft., we're looking for controlled construction. If you will be taking this on, please see attached submittal requirements and call with questions.  
Thanks.

Thanks Jim. I'll review this and get back to you.

Michael W. Schafer, P.E.  
Schafer Engineering Associates  
& Huntley Associates, P.C.  
(518) 393-4767  
(413) 587-7444

>>> "Jac" <jcerone@frcog.org>  
11/8/2007 1:37 PM >>>  
Michael,

Norm Young was in the office this morning, inquiring about needed

1

James Cerone

Local Inspector

Franklin County Cooperative  
Inspection Program

425 Main St. Suite 25

Greenfield, MA 01310

(413) 772-2026 Ext. 124

jcerone@frcog.org

2

**Tim Nourse**

**From:** Michael Schafer  
[SchaferM@Schafer  
EA.com]  
**Sent:** Friday, November  
09, 2007 11:35 AM  
**To:** jcerone@frcog.org  
**Cc:** Tim Nourse  
**Subject:** RE: Nourse Farms  
expansion

Thanks Jim. I'll download and put together for you. I may have to sign it on behalf of the Owner if that is Okay, as he'll be out of the state for a month.

Mike

>>> "Jac" <jcerone@frcog.org>  
11/9/2007 11:11 AM >>>  
Michael, Our website is  
[www.frcog.org](http://www.frcog.org) Go to building, permit applications, commercial. It will be important to have existing building evaluation(ch.34) as part of the code compliance info. Thanks, Jim  
Cerone

The Building Inspector assumes that 780 CMR 116 Controlled Construction and 780 CMR 3402.1.1 Evaluation are required for this building because it's size exceeds 35,000 Cu. Ft.

# Building Permit to Expand the Nourse Pack House at 41 River Road, Whately, MA (Foundation Only)

**BUILDING PERMIT NO. 38224-B**

FRANKLIN COUNTY COOPERATIVE INSPECTION PROGRAM

Applicant: Nourse Farms      Bldg Site: 41 River Rd.      Date: November 20, 2007

Permit To: Construct      (0) Stories      FOUNDATION ONLY for barn addition      Zoning District: Whately

Assessors Map:      Parcel:      Lot Size:      Frontage:      0.0

Bldg is to be      0 Ft. Wide By      0 Ft. Long By      0 Ft. In Height

and shall conform in construction to type:      Use Group:      Foundation:

Remarks:      (Type)

Area:      0 (Sq. Ft.)      Estimated Cost:      \$0      Permit Fee:      \$30.00

Owner: Nourse Farms      Bldg. Official

Mail Add: 41 River Rd.      So. Deerfield, MA 01373

James D. Hawkins

THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY APPLICABLE SUBDIVISIONS, REGULATIONS, SPECIAL PERMIT, OR OTHER ZONING RESTRICTIONS.

INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK:

1. Foundations
2. Prior to Covering Structural Members (Ready to Insulate)
3. Final Inspection Before Occupancy

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.

Building Inspection Approvals	Plumbing Inspection Approvals	Electrical Inspection Approvals
1	<i>Sign J. J. 11/1/07</i>	
2	<i>Final Tom W. D. 4/1/08</i>	
3	Heating Inspection Approvals	
Board of Health	Fire Chief	Other

1. PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

2. Work shall not proceed until the Inspector has approved the various stages of construction.

3. Inspections indicated on this card can be arranged for by telephone or written notification.

4. THIS CARD MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES \*\*\*\*

- On November 19, 2007 the Building Official Issues the Building Permit
- The Permit is issued for a "Barn Addition"
- The Permit is Limited to the Foundation Only
- Rough and Final Electrical Inspections have been Approved

# Building Permit Application Signed by Inspector, January 2008

Franklin County Cooperative Inspection Program—County Courthouse, 425 Main St., Ste. 25,  
Greenfield, MA. 01301-3393  
(413) 772-2026 Fax: (413) 773-0896 Website: www.fcip.org  
Ashfield Barnardston Buckland Charlemont Conway Enfield Gill Hawley Heath Leverett Leyden  
Shefford Stratfordbury Whately

Form  
2

COMMERCIAL  
RENOVATIONS/ADDITIONS/ACCESSORY STRUCTURES  
RESIDENTIAL BUILDING PERMIT APPLICATION

Permit # 382684  
Fee 600

Note: This application is not for new single or two family homes, wood-  
stoves, swimming pools, or commercial projects.

Instructions: Applicant must fill out all of Section 1 and the appropriate sections for the specific type of project.

Section 1 Date: Assessor's Map#: Lot #: Use Group: Const. Type: Other: F-1

Zoning District: Code Edition To be used (From April 1, 2007 to October 1, 2007-Circle One): 6th

Town: WHATELY Site Address: 411 RIVER Rd

Owner's Name: NOUNSE FARM Mailing Address: 88 DREARFIELD

Owner's telephone #: (413) 665-2658 (H) (C) (Cell)

Contractor: NORMAN YOUNG Mail Address: 25 So. Millersburg Town So. Deerfield

Construction Supervisor #: 0252623 Expiration Date: 5-23-08 Lic. #

Cont. Tel#: 413-665-4245 Cell 773 666-1 Fax E-mail

Estimated Cost: 100000 Sq. Ft. Living Space (New): Sq. Ft. Other Space (New): 2000

Obtain the following signatures (where applicable) BEFORE submitting this application:  
Fire Chief: (Signature) Date: 1/7/08

Board of Health: (Signature) Date: 1/7/08

Conservation Commission: (Signature) Date: 1/7/08

Inspector of Buildings: (Signature) Date: 1/7/08

Explanation of work: Be specific. For example: "Install new bath and kitchen," not "Interior Renovations"  
Metal Fabric Addition to Commercial Space

The undersigned certifies that the above statements and all accompanying information are true to the best of their knowledge and belief. The owner of this structure and the undersigned agree to conform to all applicable laws of the town and state, and believe the work proposed to be in compliance with all zoning regulations and the Massachusetts State Building Code 780CMR, SECTION 11A.3 OF THE MASS. REGS. CODE REQUIRES EVERY APPLICATION TO BE SIGNED BY THE OWNER OF THE PROPERTY OR BY AN AUTHORIZED AGENT. IF IT IS SIGNED BY AN AGENT, A CONTRACT SIGNED BY THE OWNER OR LETTER OF AUTHORIZATION MUST ACCOMPANY THE APPLICATION.

NEWMAN YOUNG (Print Name of Owner or Authorized Agent) (Signature of Owner or Authorized Agent) Date 11-13-07

NOTE: CONTRACTOR AFFIDAVIT OR HOMEOWNERS LICENSE EXEMPTION MUST ALSO BE SIGNED ON PAGE 2

- The Application for a Building Permit which was submitted in November 2007 has been altered.
- The Renovations/Additions/Accessory Structures Form was changed to indicate that it was a "Commercial" Permit Application.
- The Use Group was changed to F-1
- Language was added to the Explanation of Work Section of the Form



**MISC.**

- ☐ Crawl space ventilation
- ☐ Crawl space access (18x24)
- ☐ Attic access (22x30 required if attic height over 30")
- ☐ Smoke detector locations
  - ☐ Basement (2 required if over 1200sqft)
  - ☐ Bedrooms
  - ☐ Areas outside of bedroom (1 per 1200sqft)
- ☐ Bedroom egress window (20x24)
- ☐ Glazing habitable space (8%)
- ☐ Ventilation habitable space (4%)

*Foundation Permit A/needed 15500*

**MODULAR BUILDINGS**

- ☐ CSI (no homeowner exemption allowed)
- ☐ Stamps
- ☐ Foundation plan
- ☐ Plans and specifications for additional construction
- ☐ Manufacturer's approval of garage under or other special conditions
- ☐ Manufacturer's certificate for installers
- ☐ Set manual

**ACCESSORY BUILDINGS**

- ☐ Fire protection attached garage (no openings to sleeping areas)
- ☐ Deck framing
  - ☐ Column spacing
  - ☐ Carrying beam size
  - ☐ Joist size/spacing

**ZONING REVIEW**

*O/C Per Jim H*

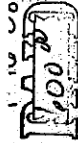
Sq. Ft. 1 <sup>st</sup> fl.	x \$100= \$	District	
2 <sup>nd</sup> fl.	x \$100= \$	Lot Size	Frontage
3 <sup>rd</sup> fl.	x \$100= \$	Setbacks OK?	
Cellar	x \$10= \$	Allowed by right?	
Porch/Deck	x \$10= \$	by S.P.?	
Other	x = \$	by Var?	
Conversion to living space (res)	x \$90	Per Sec.	
Con. of non-concl to com/ind	x \$110	SP/Var Recorded Bk	Pg
Garage	x \$30= \$		
Comel/Indus'l	2000 x \$120= 240,000		

Site Town	Unak	Site Address	
Map	Lot	Name	James Fran
Type of Project	Addition to factory		
Stories	1	Dwelling Units	
Width	Length	Height	
Construction Type	5A	Use Group	F1 #Bedrooms
Sq. Ft. Living	200,000	Sq. Ft. Non-living	2000
Est. Cost	\$ 20,000	Fee	\$ 600
Conditions: Details for fire wall & extension wall ratings			
Submitted by Engineer:			

# 2008 Permit, (page 2), for Pack House Expansion, Structure

- The Type of Project has been changed to "Addition to Factory."
- The Use Group of the Building has been changed from its Historical, Agricultural Use, to an F-1 Factory Use
- The Building Official made the Permit Conditional on the Submission of Details for Firewall and Exterior Wall Ratings from an Engineer.

# 2008 Building Permit for Pack House Expansion Structure



BUILDING PERMIT NO. 38268-B

COUNTY COOPERATIVE INSPECTION PROGRAM

Date: January 08, 2008

ant: Nourse Farms

Bldg Site: 41 River Rd.

Whately

Zoning District

Permit To: Construct (0) Stories addition to factory # of Dwelling Units -

Assessors Map: Parcel: Lot Size: Frontage: 0.0

Bldg is to be 0 Ft. Wide By 0 Ft. Long By 0 Ft. In Height  
and shall conform in construction to type: Use Group: Foundation:

Remarks: (Type)

Area: 2,000 (Sq. Ft.) Estimated Cost: \$100,000 Permit Fee: \$600.00

Owner: Nourse Farms Bldg. Official

Mail Add: 41 River Rd. Whately, VA 01093

James D. Hawkins

THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY APPLICABLE SUBDIVISIONS, REGULATIONS, SPECIAL PERMIT, OR OTHER ZONING RESTRICTIONS.

INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK  
1. Foundations  
2. Prior to Covering Structural Members (Ready to Insulate)  
3. Final Inspection Before Occupancy

Where applicable, separate permits are required for electrical, plumbing, and mechanical installations.

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CAN BE KEPT UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.

Building Inspection Approvals Plumbing Inspection Approvals Electrical Inspection Approvals

1

FRANK 2-7-08

2 11/2/08 D. Sullivan

3

Heating Inspection Approvals

Board of Health Fire Chief Other

1. PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

2. Work shall not proceed until the Inspector has approved the various stages of construction.

3. Inspections indicated on this card can be arranged for by telephone or written notification.

4. \*\*\* THIS CARD MUST BE DISPLAYED IN A CONSPICUOUS PLACE ON THE PREMISES \*\*\*

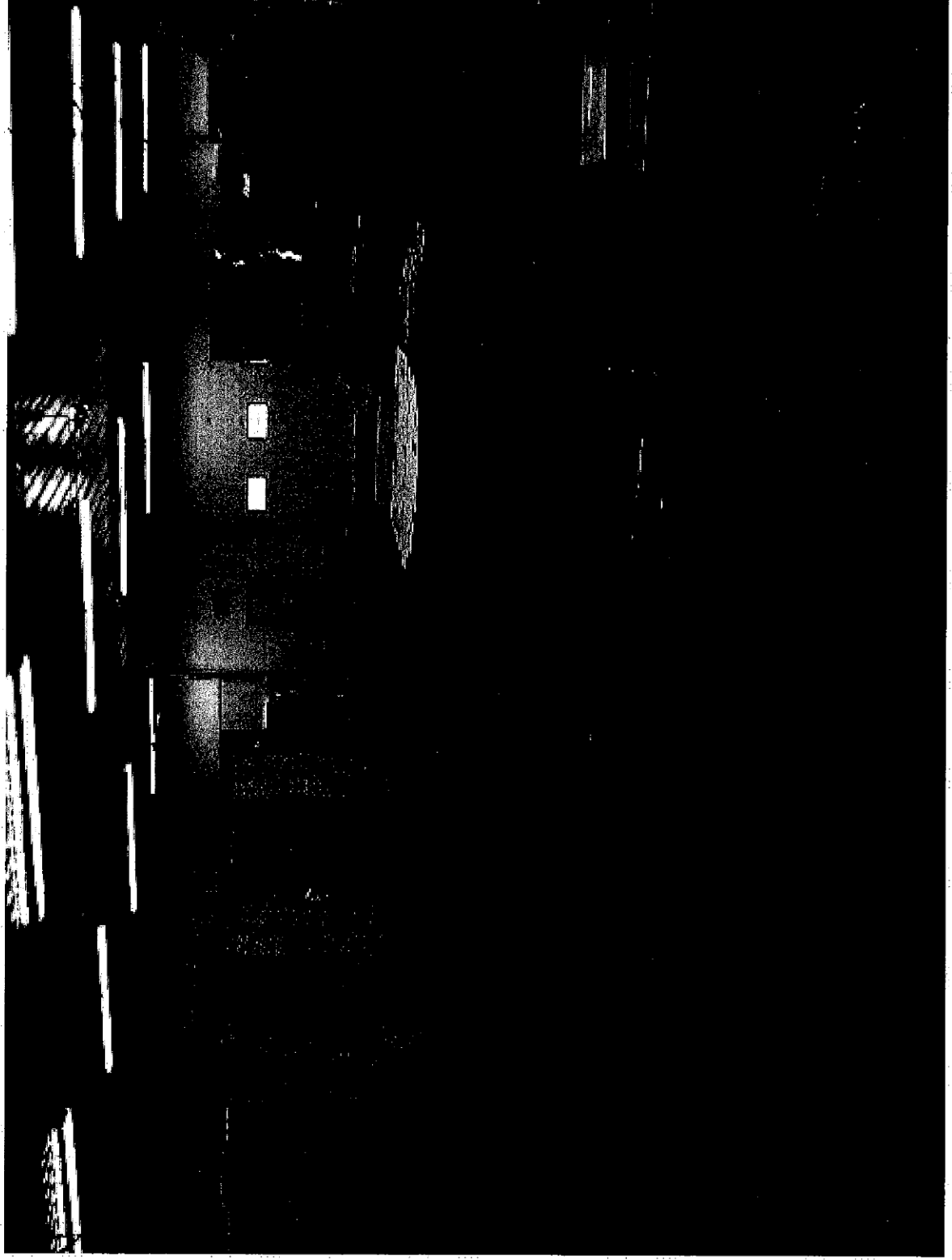
- The Building Official issues the Building Permit for the Structure of the Nourse Pack House Expansion on January 8, 2008.

- The Building Official replaces the Language of the Foundation Permit from "Addition to Barn" with "Addition to Factory" for the Structure.

- The Building Official does not indicate the Use Group in the required area on this Form.

- Framing and Insulation Inspections have been Approved

## The 2000 ft<sup>2</sup> Expansion to Pack House Completed in 2008





## Franklin County Cooperative Inspection Program

County Courthouse, 425 Main Street, Suite 25, Greenfield, MA 01301-3313

Tel: (413) 772-2026 Fax: (413) 773-0896

[www.fcqip.org](http://www.fcqip.org)



May 9, 2008

Timothy Nourse  
Nourse Farms  
41 River Rd  
Whately, MA, 01093

Re: Building Code Analysis, Siegfried Porth

Dears Mr. Nourse,

I have reviewed the building code analysis that you had submitted to us from Siegfried Porth regarding the Nourse Farm addition (permit number 38268), and cannot accept the "Utility" use group classification. I have consulted with State Building Inspector, Gordon Bailey, and a code consultant from The International Code Council. We are all in agreement that, whereas the term agricultural would apply to any zoning regulations regarding this structure, the Building Code Classification would be Factory(F1) and Storage(S1).

Consequently, a Certificate of Use and Occupancy will not be issued until I receive details that comply with 780 CMR for the fire wall and exterior wall ratings from an architect or engineer, registered in the State of Massachusetts, and these walls are constructed or modified in accordance with those details.

If you are aggrieved by my order, you may appeal to the State Board of Appeals per section 122.1 of the Massachusetts Building Code. You must file any appeal within forty-five (45) days after service of this notice. If you have any questions, please call this office on any weekday morning. Thank you for your co-operation.

Respectfully,

*James A. Cerone*  
James A. Cerone  
Local Inspector

Cc: Michael Schafer  
Norman Young  
selectboard

### Member Towns:

Adfield Heath Shelburne  
Canaan Erving Shrewsbury  
Berkshires Greenfield Whately  
Chatham Hanley Rowe

A program of the Franklin Regional  
Council of Governments



## BUILDING INSPECTOR'S ORDER RE: PACK HOUSE EXPANSION

- Inspector Rejects Building Code (780 CMR) Analysis Submitted by Architect
- Inspector rejects "Utility" Use Group Classification for Building
- After consultation with a Code Consultant from the International Code Council the Inspector agreed that Agriculture applies to the Zoning of the Structure but the believes that the Building Code Classification would be Factory (F1) and Storage (S1)
- Inspector will not Issue a Certificate of Use and Occupancy without receiving details complying with 780 CMR for fire wall and exterior wall ratings that meet F-1 and S-1 requirements.

# THE MASSACHUSETTS STATE BUILDING CODE

## USER'S GUIDE to 780 CMR *Sixth Edition*

### PART I - OVERALL CHANGES

- The *Sixth Edition* of the Massachusetts State Building Code is based on the provisions of the 1993 BOCA National Building Code. However, since significant changes have been made to the national code, the *Sixth Edition* is considered a unique document to the Commonwealth. One should not assume that the two documents are compatible. There are several reasons for differences between the two codes, some of which are identified below.
  - (1) In some instances, requirements of Massachusetts General Laws (M.G.L.) conflict with provisions of the national code. Since law is superior to regulation, the national code must be stripped of any conflicting language.

The Building Official should not have based his Use Group Classification on definitions, language of the International Building Code or contained in the Proposed 7<sup>th</sup> Edition of the Massachusetts Building Code which has not been ratified and made effective by the BBRS. This includes, but is not limited to, definitions added to 780 CMR Chapter 2, language added to 780 CMR 312 and the additional requirements of 780 CMR 120.C, (which are presently only effective for the 7<sup>th</sup> Edition for One and Two Family Dwellings).

# 780 CMR, 6<sup>th</sup> Edition, Use Group Classifications

## 780 CMR 302.0 CLASSIFICATION

**302.1 General:** All structures shall be classified with respect to occupancy in one or more of the use groups listed below. Where a structure is proposed for a purpose which is not specifically provided for in 780 CMR, such structure shall be classified in the use group which the occupancy most nearly resembles.

1. Assembly:  
(see 780 CMR 303.0) Use Groups A-1, A-2, A-3, A-4 and A-5
2. Business:  
(see 780 CMR 304.0) Use Group B
3. Educational:  
(see 780 CMR 305.0) Use Group E
4. Factory and Industrial:  
(see 780 CMR 306.0) Use Groups F-1 and F-2
5. High Hazard  
(see 780 CMR 307.0) Use Groups H-1, H-2, H-3 and H-4
6. Institutional:  
(see 780 CMR 308.0) Use Groups I-1, I-2 and I-3
7. Mercantile:  
(see 780 CMR 309.0) Use Group M
8. Residential:  
(see 780 CMR 310.0) Use Groups R-1, R-2, R-3, R-4 and R-5
9. Storage:  
(see 780 CMR 311.0) Use Groups S-1 and S-2
10. Utility and Miscellaneous  
(see 780 CMR 312.0) Use Group U

## 780 CMR 312.0 UTILITY AND

### MISCELLANEOUS USE GROUP

**312.1 General:** Buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to conform to the requirements of 780 CMR commensurate with the fire and life hazard incidental to their occupancy. Use Group U shall include fences over six feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as *private garages*, carports, sheds and agricultural buildings.

## 780 CMR 306.0 FACTORY AND

### INDUSTRIAL USE GROUPS

**306.1 General:** All structures in which occupants are engaged in work or labor in the fabricating, assembling or processing of products or materials, shall be classified as Use Group F-1 or F-2. This includes, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing occupancies. The term "Use Group F" shall include Use Groups F-1 and F-2.

**306.2 Use Group F-1 structures:** Factory and industrial occupancies which are not otherwise classified as low-hazard, Use Group F-2, shall be classified as a moderate-hazard factory and industrial occupancy, Use Group F-1. The manufacturing processes listed in Table 306.2 are indicative of and shall be classified as Use Group F-1.

# The General Laws of Massachusetts

## Chapter 128, Section 1A

### PART I. ADMINISTRATION OF THE GOVERNMENT

### TITLE XIX. AGRICULTURE AND CONSERVATION

#### CHAPTER 128. AGRICULTURE

#### DEFINITIONS

Chapter 128: Section 1A. Farming, agriculture, farmer; definitions

Section 1A. “Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

# Records of the Franklin County Cooperative Inspection Program

## Classifying the Nourse Building as Agricultural

425 Main Street, Ste. 25, County Courthouse  
Greenfield, MA 01301-3393  
Phone: 413-772-2026

RECEIVED APR 27 2004

PERMIT # 33393-B DATE Whatley FEE \$ 150  
Location of Bldg: Town Whately Street & # 41 River Rd  
Construction is on N S E W side of street

CIRCLE APPROPRIATE CHOICE(S) AND EXPLAIN: TYPE OF BLDG: DESCRIBE

ROOFING (any sheathing Yes or No) NO Res'l \_\_\_\_\_  
SIDING (# of existing layers) \_\_\_\_\_ Comc'l \_\_\_\_\_

REPLACEMENT WINDOWS Indus'l \_\_\_\_\_  
Agric'l Storage + Office

EXPLANATION OF WORK Strap over Existing Metal  
And Install New Fabric Roof System

OWNER NAME Maury Adams MAIL ADDRESS 41 River Rd  
PHONE (H) 413-665-7337 (W) 413-665-2658 TOWN Whately MA  
CONTRACTOR NAME Roy Orasta MAIL ADDRESS 21 North St  
PHONE 247-5666 TOWN Whately MA  
License # 006763 H.I. Reg. # 101533

Distance of structure to nearest lot line 100  
Estimated cost \$ 30,000

\*\*\*\*\*  
The owner of this building and the undersigned agree to conform to all applicable laws of the town and state.

Signature of owner or authorized agent: Maury Adams (owner)  
(If agent signs, a signed contract must be attached)  
Approval of Building Official: [Signature] Date 4.28.04

Form 10/2003/04

- Application for a Building Permit to Re-Roof the Nourse Farm Building at 41 River Road from 2004
- This agriculture building also contains the Farm's offices.
- The Type of Building is Classified as Agricultural.
- The Building Official Approved this Application and Issued a Permit, (No 32393).



# Records of the Franklin County Cooperative Inspection Program

## Identifying the Nourse Farm Building as a Barn.

**The Commonwealth of Massachusetts**  
 TOWN OF Whately  
 In accordance with the Massachusetts State Building Code, Section 120.0 this  
**CERTIFICATE OF USE AND OCCUPANCY**  
 is issued to Mary Nourse - re-roof barn w/fabrial roof system @ 41 River Rd.

"No building nor structure shall be erected, and no land, building or structure shall be used for a new, different, changed or enlarged use without a Building Permit therefor first having been obtained from the Building Commissioner. No building shall be occupied until a certificate of occupancy has been issued by the Building Commissioner."

Use Group \_\_\_\_\_ Fire Grading \_\_\_\_\_ Occupancy load \_\_\_\_\_  
 Live Loads \_\_\_\_\_ 1st \_\_\_\_\_ 2nd \_\_\_\_\_ 3rd \_\_\_\_\_

THIS PERMIT WILL NOT BE VALID, AND THE BUILDING SHALL NOT BE OCCUPIED UNTIL SIGNED BY THE BUILDING COMMISSIONER UPON SATISFACTORY COMPLIANCE WITH TOWN REQUIREMENTS

32293-CO \_\_\_\_\_  
 Certificate Number \_\_\_\_\_  
 Date Certificate Issued 06/18/2004

Building Commissioner \_\_\_\_\_ Electrical Inspector \_\_\_\_\_ Plumbing/Gas Inspector \_\_\_\_\_

- This CO was issued in 2004 for the Nourse Farm Building at 41 River Road, Whately
- The Building Official Identifies the building, at 41 River Road, as a "Barn"
- The Building Official does not identify a Use Group

## 780 CMR 116.0 REGISTERED ARCHITECTURAL AND PROFESSIONAL ENGINEERING SERVICES – CONSTRUCTION CONTROL

**116.1 General:** The provisions of 780 CMR 116.0 define the construction controls required for all *buildings* and *structures* needing registered architectural or registered professional engineering services, and delineate the responsibilities of such professional services together with those services that are the responsibility of the contractor during construction.

The following structures are exempt from the requirements of 780 CMR 116.0;

1. Any *building* containing less than 35,000 cubic feet of enclosed space, measured to the exterior surfaces of walls and *roofs* and to the top of a ground supported floor, or in the case of a crawl space, to the bottom surface of the crawl space. In the case of basement floors or levels, the calculation of enclosed space shall include such spaces.
2. Any single or two family dwelling or any accessory *building* thereto;
3. Any *building* used exclusively for farm purposes (this exemption does not apply if the building is to be used for large assemblies of people or uses other than farm purposes)
4. *Retaining walls* less than ten feet in *height* at all points along the wall as measured from the base of the footing to the top of the wall.

The Nourse Farms Building and Pack House Expansion meet the requirements of the Exemption allowed by 780 CMR 116.1.3. Nourse Farms has always used and continues to use this building exclusively for agricultural or farm purposes and it is not used for large assemblies.

## 780 CMR 3400

### Repair, Alteration, Addition and Change of Use of Existing Buildings

**3402.1.1 Investigation and evaluation:** For any proposed work regulated by 780 CMR 34, which is subject to 780 CMR 116, as a condition of the issuance of a building permit the building owner shall cause the *existing building* (or portion thereof) to be investigated and evaluated in accordance with the provisions of 780 CMR 34 (see Appendix F).

- The Nourse Farm Building is Exempt from the requirements of 780 CMR 116.1.3 due to the nature of its Agricultural activities.
- This Exemption also relieves the Nourse Building from the requirement for a Chapter 34 evaluation.
- However, Nourse Farms did submit a Building Code Analysis, conducted by a Licensed Architect, (included with Appeal.)
- Architect Siegfried Porth determined that the Pack House and the Expansion thereto fall in the Utility and Miscellaneous Group Classification of 780 CMR 312
- The “Utility” Use Group Classifications are also not applicable to Appendix F, (see 780 CMR Table F-1)

# 780 CMR Table 313.1.2

## Fire Resistance Rating Requirements for Fire Separation

Table 313.1.2  
FIRERESISTANCE RATING REQUIREMENTS FOR FIRE SEPARATION  
ASSEMBLIES BETWEEN FIRE AREAS<sup>a</sup>

Use Group	A-1	A-2	A-3	A-4	A-5	B	E	F-1	F-2	H-1	H-2	H-3	H-4	I-1	I-2	I-3	M	R-1	R-2	R-3	S-1	S-2	U
A-1	2	2	2	2	2	2	2	2	2	NP	4	3	2	2	3	3	2	2	2	2	2	2	NA
A-2	3	3	3	3	3	3	3	3	3	NP	4	3	3	3	3	3	3	3	3	3	3	3	NA
A-3	2	2	2	2	2	2	2	2	2	NP	4	3	2	2	3	3	2	2	2	2	2	2	NA
A-4	2	2	2	2	2	2	2	2	2	NP	4	3	2	2	3	3	2	2	2	2	2	2	NA
A-5	NA						2	2	2	2	NP	4	3	2	2	3	3	2	2	2	2	2	NA
B	2						2	2	2	2	NP	4	3	2	2	3	3	2	2	2	2	2	NA
E	2						2	2	2	NP	4	3	2	2	3	3	2	2	2	2	2	2	NA
F-1	2						2	2	NP	4	3	2	2	2	3	3	2	2	2	2	2	2	NA
F-2	2						NP	4	3	2	2	3	3	2	2	3	2	2	2	2	2	2	NA
H-1	NP						NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NA
H-2	4						4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	NA
H-3	3						3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	NA
H-4	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
I-1	2						2	3	3	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
I-2	3						3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	NA
I-3	3						3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	NA
M	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
R-1	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
R-2	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
R-3	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
S-1	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
S-2	2						2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	NA
U	NA						NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Note a. Fire resistance ratings are expressed in hours.

December 23, 2007

Mr. James Cerone  
Franklin County Cooperative Inspection Program  
425 Main St. Suite 25  
Greenfield, MA 01310

Ex #3

Need 1) 3 HR RATED FW  
F1 USE - 7.7.1

2) at 1st

BPRS meeting Nov. 18, 2008

**RE: Code Compliance Letter - Nourse Farm Pack House Expansion**

Dear Mr. Cerone:

In follow-up to your request, Schafer Engineering Associates (SEA) has performed a building code review of the building expansion project noted above. The attached Building Code Compliance Worksheet summarizes our review of the applicable code sections without the input of any fire area increase allowances.

As can be seen from the attached worksheet, the proposed F1, Type 5B existing building and addition will have a total fire area of 5,863sf (1,063sf more than allowed per Table 503). However, the building is accessible on 2 sides for a total length of 170 feet or 50% of the total building perimeter. Thus, the code allows a 2% increase in the allowable fire area for every 1% of accessible length over 25% (which calculates out to a 50% increase in the allowable fire area). Thus the maximum allowable fire area for the Pack House is 7,200sf, which is great than the proposed total of 5,863sf. The current building height of the existing Pack House is 20 feet, as will the expansion.

However, as discussed, there still remains the issue of the Pack House's connection to the main building. As discussed, in order for the addition to meet the above mentioned allowable fire area, the Pack House will need to be separated from the main building. Thus, following discussions with the Owner (Mr. Nourse), SEA proposes to pursue the following:

1. Install a (2)-hour non-combustible firewall within the pass-thru structure(s) between the existing Pack House and main buildings. The Owner has yet to decide whether the (2) existing pass-thru structures will be combined into a single larger one or whether they will remain separate. A (2)-hour fire-rated roll-up fire door will be installed within the firewall, complete with a Fusible Link or Electro-Thermal Link release system. In addition, a (2)-hour fire-rated man door will also be installed. The pass-thru structures' halves created by the firewall(s) will be independently structurally supported to their existing neighboring buildings.
2. Install (1)-hour interior wall finishes to the existing Pack House's exterior end wall and the main building's side wall (only to parallel limits of Pack House end wall's area), due to the (8)-foot offset between the exterior faces of the existing buildings in question (Section 705.3). Wall opening limitations will apply.

Based on your final acceptance of the above proposal, SEA will amend its original plans for the Pack House Expansion to include the proposed firewall/pass-thru structure modifications. We trust that the above proposal will be acceptable to you such that the expansion construction currently underway may continue forward. Please also find attached an Envelope Compliance Certification and a Construction Control Affidavit, as requested. If you have any questions, please feel free to contact me.

Sincerely,

**SCHAFER ENGINEERING ASSOCIATES**

*Michael W. Schafer*  
Michael W. Schafer, P.E.  
Principal

C:\Documents and Settings\Michael Schafer\Desktop\607-052 Permit Letter.doc

1885 State Street • Schenectady, New York 12304 • PH: (518) 393-4767 • FAX: (518) 393-3510  
16-18 Reynolds Avenue • Oneonta, New York 13820 • PH: (607) 432-3300 • FAX: (607) 432-8313  
30 Industrial Drive • Northampton, Massachusetts 01060 • PH: (413) 584-7444 • FAX: (413) 586-9159



Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

Kevin M. Burke  
Secretary

# *The Commonwealth of Massachusetts*

## *Department of Public Safety*

*Board of Building Regulations and Standards*

*One Ashburton Place, Room 1301*

*Boston, Massachusetts 02108-1618*

*Phone (617) 727-7532 Fax (617) 227-1754*

*TTY (617) 727-0019*

*www.mass.gov/dps*

Thomas G. Gatzunis, P.E.  
Commissioner

Gary Moccia, P.E.  
Chairman

Alexander MacLeod, R.A.  
Vice Chairman

Robert Anderson  
Administrator

18-Aug-08

Mr./Mrs. Timothy Nourse  
41 River Road  
Whately, MA. 01093

**Docket Number** 08-622  
**Property Address** 41 River Road Whately, MA. 01093  
**Hearing Location** National Guard Armory 14 Minuteman Lane, Wellesley, MA  
**Hearing Date and Time** 08-26-08 11:00 a.m.

Dear Mr./Mrs. Nourse

The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

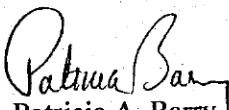
The State Building Code Appeals Board requires your presence or that of your representative at its hearing relative to the above case.

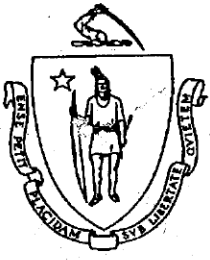
Please bring with you a copy of the record, including any plans, sketches, drawings, etc, that will help to give the Appeals Board grounds to adjudicate this appeal. The State Building Code Appeals Board hearings are held pursuant to 801 CMR 1.02 Informal Fair Hearing Rules.

NO POSTPONEMENTS OR REFUNDS WILL BE GRANTED. In order to reschedule an appeal case, you must first withdraw the original case and file a new application. A new application fee will be required.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

  
Patricia A. Barry  
Coordinator



Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

Kevin M. Burke  
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# *The Commonwealth of Massachusetts*

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18-Aug-08

Mr./Mrs. Cerone  
Building Commissioner  
County Courthouse, 425 Main St., Suite 25  
Greenfield, MA. 01301-3313

**Docket Number** 08-622  
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THE STATE BUILDING CODE APPEALS BOARD

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# *The Commonwealth of Massachusetts*

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Chairman

Alexander MacLeod, R.A.  
Vice Chairman

Robert Anderson  
Administrator

18-Aug-08

Chief John S. Hannum  
P.O. Box 516  
Whately, MA 01093

**Docket Number** 08-622  
**Property Address** 41 River Road Whately, MA. 01093  
**Hearing Location** National Guard Armory 14 Minuteman Lane, Wellesley, MA  
**Hearing Date and Time** 08-26-08 11:00 a.m.

Dear Chief John S. Hannum

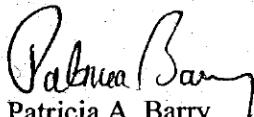
The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

This notice is forwarded to you by the State Building Code Appeals Board as a courtesy. You are not compelled to attend but are encouraged to do so if you have a particular interest in the case.

If you have any questions relative to the above referenced appeal, please contact your BUILDING OFFICIAL.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

  
Patricia A. Barry  
Coordinator





OFFICE OF THE  
BOARD OF SELECTMEN

# TOWN OF WHATELY

MASSACHUSETTS 01093

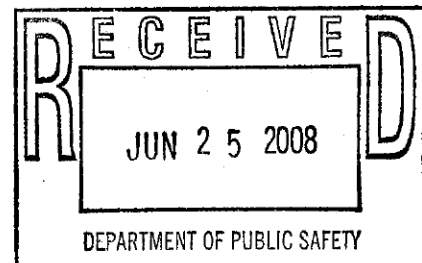
[www.whately.org](http://www.whately.org)

Center School Offices  
218 Chestnut Plain Road  
P. O. Box 181  
Whately, MA 01093

Phone: 413-665-4400  
Fax: 413-665-9560

June 25, 2008

Program Manager, Board of Appeals  
Board of Building Regulations and Standards  
One Ashburton Place, Room 1301  
Boston, MA 02108-1618



Dear Sir:

Enclosed is a copy of a letter concerning Nourse Farms, an agricultural enterprise in Whately sent to our local building inspector. It is the Selectmen's understanding that Mr. Nourse has filed an appeal with your board regarding the decision by the local inspector to classify this building as F1 or S1.

We hope that you will take the Selectmen's comments into consideration as you review the documentation presented by Mr. Nourse.

Sincerely,

Lynn M. Sibley  
Town Administrator



OFFICE OF THE  
BOARD OF SELECTMEN

June 24, 2008

# TOWN OF WHATELY

MASSACHUSETTS 01093

[www.whately.org](http://www.whately.org)

Center School Offices  
218 Chestnut Plain Road  
P. O. Box 181  
Whately, MA 01093

Phone: 413-665-4400  
Fax: 413-665-9560

Mr. James A. Cerone  
Local Inspector  
Franklin County Cooperative Inspection Program  
425 Main Street, Suite 25  
Greenfield, MA 01301

Dear Jim,

The Selectmen met with Timothy Nourse of Nourse Farms, 41 River Road at our June 10, 2008 meeting. Mr. Nourse along with Paul Dunphy, Representative Kulik's aide, voiced their concerns regarding the building code classification for Mr. Nourse' new building and the additional fire protection that classification will require.

Mr. Nourse has run an agricultural enterprise which includes not only sorting, packaging and shipping strawberry plants but also research and laboratory work for developing new strawberry varieties. It is our understanding that the farm has outgrown the sorting, packaging and shipping area and they wanted to expand this area to accommodate the growing business.

As the use of the building hasn't changed from its original use and has only expanded, we would like you to reconsider your decision to classify this project as an F1 or S1 which would require additional fire protection, whereas the Utility use is not as strict. It is our understanding that there was an addition made to this building in 2000 which did not require additional fire protection.

As Selectmen, we don't pretend to know all the intricacies of the building code and we certainly aren't asking that you jeopardize your position as building inspector, but after speaking with Mr. Nourse his explanations made a lot of sense. We believe that it is Mr. Nourse' intent to file an appeal with the State Board of Appeals as you suggested in your letter. However, in the meantime, Mr. Nourse will be submitting to you further documentation in support of his case and we hope that after review of that information, you may reconsider your classification of his project.

Whately is an agricultural community and many of our residents make their living as farmers. Although, we certainly aren't asking that farmers receive special treatment, there appears to be existing exemptions within the building code to allow some leniencies

December 23, 2007

Mr. James Cerone  
Franklin County Cooperative Inspection Program  
425 Main St. Suite 25  
Greenfield, MA 01310

Need 1) 3 HR rated FW  
F1 Use - 7.7.1  
2) ~~at least~~

**RE: Code Compliance Letter - Nourse Farm Pack House Expansion**

Dear Mr. Cerone:

In follow-up to your request, Schafer Engineering Associates (SEA) has performed a building code review of the building expansion project noted above. The attached Building Code Compliance Worksheet summarizes our review of the applicable code sections without the input of any fire area increase allowances.

As can be seen from the attached worksheet, the proposed F1, Type 5B existing building and addition will have a total fire area of 5,863sf (1,063sf more than allowed per Table 503). However, the building is accessible on 2 sides for a total length of 170 feet or 50% of the total building perimeter. Thus, the code allows a 2% increase in the allowable fire area for every 1% of accessible length over 25% (which calculates out to a 50% increase in the allowable fire area). Thus the maximum allowable fire area for the Pack House is 7,200sf, which is great than the proposed total of 5,863sf. The current building height of the existing Pack House is 20 feet, as will the expansion.

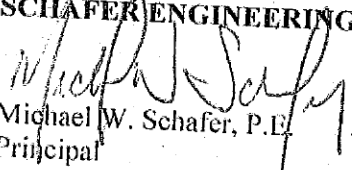
However, as discussed, there still remains the issue of the Pack House's connection to the main building. As discussed, in order for the addition to meet the above mentioned allowable fire area, the Pack House will need to be separated from the main building. Thus, following discussions with the Owner (Mr. Nourse), SEA proposes to pursue the following:

1. Install a (2)-hour non-combustible firewall within the pass-thru structure(s) between the existing Pack House and main buildings. The Owner has yet to decide whether the (2) existing pass-thru structures will be combined into a single larger one or whether they will remain separate. A (2)-hour fire-rated roll-up fire door will be installed within the firewall, complete with a Fusible Link or Electro-Thermal Link release system. In addition, a (2)-hour fire-rated man door will also be installed. The pass-thru structures' halves created by the firewall(s) will be independently structurally supported to their existing neighboring buildings.
2. Install (1)-hour interior wall finishes to the existing Pack House's exterior end wall and the main building's side wall (only to parallel limits of Pack House end wall's area), due to the (8)-foot offset between the exterior faces of the existing buildings in question (Section 705.3). Wall opening limitations will apply.

Based on your final acceptance of the above proposal, SEA will amend its original plans for the Pack House Expansion to include the proposed firewall/pass-thru structure modifications. We trust that the above proposal will be acceptable to you such that the expansion construction currently underway may continue forward. Please also find attached an Envelope Compliance Certification and a Construction Control Affidavit, as requested. If you have any questions, please feel free to contact me.

Sincerely,

**SCHAFER ENGINEERING ASSOCIATES**

  
Michael W. Schafer, P.E.  
Principal

C:\Documents and Settings\Michael Schafer\Desktop\507-052 Permit letter.doc

1885 State Street • Schenectady, New York 12304 • PH: (518) 393-4767 • FAX: (518) 393-3510  
16-18 Reynolds Avenue • Oneonta, New York 13820 • PH: (607) 432-3300 • FAX: (607) 432-8313  
30 Industrial Drive • Northampton, Massachusetts 01060 • PH: (413) 584-7444 • FAX: (413) 586-9159

## Nourse Farm Appeal

August 26, 2008

The Nourse Farm Building, located at 41 River Rd, in Whately Massachusetts was an approximately 22,000 sq. single story building of 5B construction consisting of approximately 4000sq. ft of office space, 5000 sq. ft of storage area, and 12,000 sq. ft of space used as a packing house for dried strawberry roots, when our office received application for a 2000 sq. ft. addition to the building to be used as additional space for packing.

On December 23, 2007, Structural Engineer Michael Schaffer submitted a construction control affidavit and a code analysis where he described the addition as an F1 use group and, needing a firewall to comply with the area limitations of the code. He noted in that letter that he would amend the plans to include the proposed firewall.

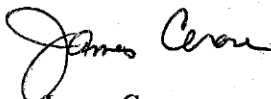
On January 8, 2008, I issued the permit for the addition on condition that details for the fire wall and exterior wall ratings were submitted by an engineer. Throughout the following months, when asked for the amended plans, Michael Schafer said that the owner was having trouble deciding on the details. The addition was completed without the firewall.

In early May, owner Tim Nourse came into the office saying that he was ready for a final inspection. I told him I had not received details for the fire wall. He said that a fire wall was not necessary and handed me a report from architect, Siegfried Porth that classified the building as a "U" use group, with an unlimited area requirement, negating the need for a fire wall.

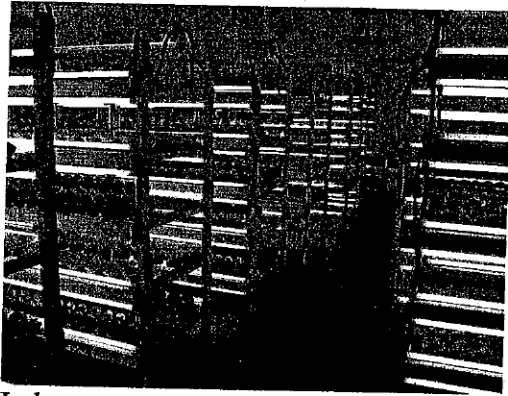
I disagreed with the report and submitted a letter to owner Timothy Nourse stating that a Certificate of Use and Occupancy would not be issued until I had received details that comply with 780 CMR requirements for the fire wall and exterior wall ratings from an architect or engineer, registered in the State of Massachusetts, and these walls were constructed or modified in accordance with those details.

As the language that describes "Utility" use groups is the same in the Massachusetts State Building Code and BOCA '93, in my opinion, it is appropriate to consult the commentary which states: *"Structures that are classified in Use Group U, utility and miscellaneous use group, are typically accessory to another building or structure"* It states further, *"They are not usually considered to be habitable or occupiable," and "are not specifically regulated by Table 503 for heights and areas because they are typically small, stand-alone structures having negligible fuel loads."* This hardly describes a 24,000 sq. ft. building with 4000 sq. ft. of office space such as the Nourse Farm Building. I urge the board not to approve this appeal.

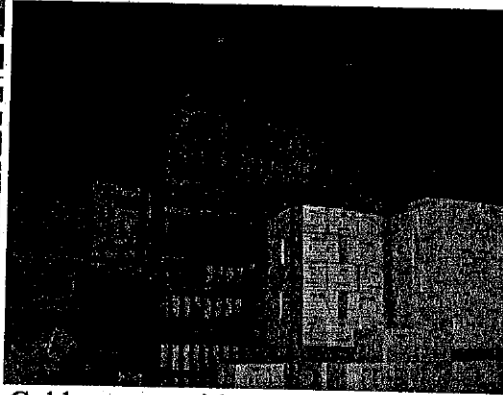
Respectfully submitted,



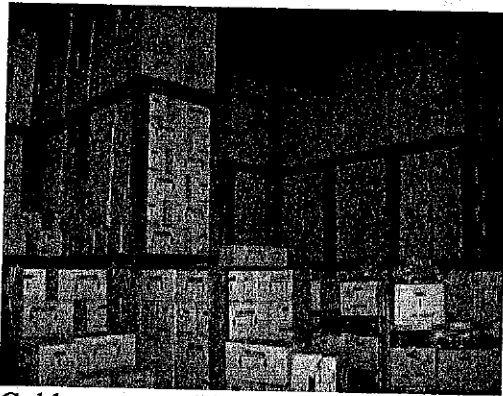
James Cerone  
Local Inspector



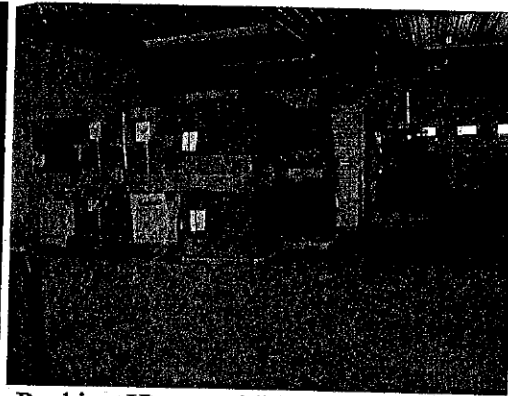
Laboratory



Cold storage with exposed foam walls



Cold storage with exposed foam walls



Packing House addition



Packing House addition



Electrical room

Respectfully submitted,  
James Cerone  
Local Inspector

MASSACHUSETTS FARM BUREAU FEDERATION, INC.

*"The Voice of Agriculture"*



466 Chestnut Street • Ashland, MA 01721 • Phone: 508-881-4766 • Fax: 508-881-4768 • Email: [goff@massfarmbureau.com](mailto:goff@massfarmbureau.com)

June 12, 2008

State Building Code Appeals Board  
Commonwealth of Massachusetts  
One Ashburton Place, Room 1301  
Boston, MA 02108

To Whom It May Concern:

The Massachusetts Farm Bureau Federation, Inc., representing our 6,200 members throughout the state, is in support of the appeal filed by Nourse Farms of Whately, Massachusetts relative to the expansion of their agricultural packing and storage facility. It is obvious to us that this building is agricultural under the code, and its use is incidental to the primary use of the farm parcel, which is agricultural production.

There are numerous examples of farm buildings that would fall under these similar circumstances. Farmers throughout the state have packing and shipping facilities, as state agricultural policy has helped move our farms into value-added production. This means controlling more of the product chain to the ultimate consumer. Horse farms have large indoor arenas which outsize other farm buildings, but are integral for training and sales of the horses and are considered to be agricultural by the courts. It is clear that the exclusive purpose of the Nourse Farm building expansion is an agricultural use under MGL Chapter 128, Section 1A (specifically preparation for market); the same statute cited in building code cases before the courts.

The Nourse Farm situation appears clear-cut to the Farm Bureau. The building expansion is agricultural under zoning, and agricultural under the building code. As such it enjoys the agricultural exemption in the code.

We urge the Board to review the Nourse Farm case, and overturn the erroneous decision made by the Building Inspector.

Sincerely,

Douglas P. Gillespie  
Executive Director

cc. Michael J. Duval, Esquire  
Tim Nourse, Nourse Farm  
Robert Ritchie, Esquire, MA Department of Agricultural Resources

# BUILDING CODE ANALYSIS

FOR

NOURSE FARMS, INC.  
41 RIVER ROAD  
SOUTH DEERFIELD, MA 01373

BY

SIEGFRIED PORTH  
ARCHITECT  
116 PLEASANT STREET  
EASTHAMPTON, MA 0127  
413-529-9434

## **SECTION 1 – BUILDING DESCRIPTION**

THE EXISTING BUILDING IS A ONE STORY 25' HIGH MASONRY STRUCTURE W/ TWO POLE BUILDING ADDITIONS. THE TOTAL AREA IS EQUAL TO APPROXIMATELY 24,661 SQUARE FEET.

### **THE USE GROUP**

#### **780 CMR 312.0 UTILITY AND MISCELLANEOUS USE GROUP**

**312.1 GENERAL: BUILDINGS AND STRUCTURES OF AN ACCESSORY CHARACTER AND MISCELLANEOUS STRUCTURES NOT CLASSIFIED IN ANY SPECIFIC USE GROUP SHALL BE CONSTRUCTED, EQUIPPED AND MAINTAINED TO CONFORM TO THE REQUIREMENTS OF 780 CMR COMMENSURATE WITH THE FIRE AND LIFE HAZARD INCIDENTAL TO THEIR OCCUPANCY.**

**USE GROUP U SHALL INCLUDE *AGRICULTURAL BUILDINGS*.**

## **THE GENERAL LAWS OF MASSACHUSETTS**

### **PART I. ADMINISTRATION OF THE GOVERNMENT TITLE XIX. AGRICULTURE AND CONSERVATION CHAPTER 128. AGRICULTURE**

#### **DEFINITIONS**

**CHAPTER 128: SECTION 1A. FARMING, AGRICULTURE, FARMER: DEFINITIONS  
[PLEASE REFER TO ATTACHED]**

**“OR ON A FARM AS AN INCIDENT TO OR IN CONJUNCTION WITH SUCH FARMING OPERATIONS, INCLUDING PREPARATIONS FOR MARKET, DELIVERY TO STORAGE OR TO MARKET OR TO CARRIERS FOR TRANSPORTATION TO MARKETS.**

- a] BUILDING USE GROUP: **U- AGRICULTURAL**
- b] **TABLE 313.1.2 FIRE RESISTANCE RATING REQUIREMENTS FOR FIRE SEPARATION ASSEMBLIES BETWEEN FIRE AREAS.**  
**USE GROUP U = N/A [NOT APPLICABLE]**
- c] **HEIGHT AND AREA LIMITATIONS:**  
**ALLOWABLE AS PER TABLE 503:**  
  
**USE GROUP U = N/L [NOT LIMITED]**



- d] BUILDING HEIGHT: 25'-0" EAVE HEIGHT
- e] NUMBER OF FLOORS ABOVE GRADE: ONE [1]
- f] NUMBER OF FLOORS BELOW GRADE: ZERO [0]
- g] AREA PER FLOOR: 24,661 SQ. FT.
- h] TYPE OF CONSTRUCTION: 3B UNPROTECTED AND 5B
- i] HAZARDOUS MATERIALS: NONE
- j] HIGH STORAGE: N/A
- k] SITE ACCESS: DIRECTLY OF OFF RIVER ROAD

## SECTION – 2 APPLICABLE LAWS, REGULATIONS, AND STANDARDS

### A] 780 CMR CHAPTER NINE “ FIRE PROTECTION SYSTEM REQUIREMENTS”

#### 1. SECTION 904.1 WHERE REQUIRED

AS PER SECTIONS 904.2 THROUGH 904.9

**SECTION 904.2** IN BUILDINGS OF USE GROUP A1, A3, A4, B, E,M, S1, F1.A3 AND R  
OF AGGREGATE FLOOR AREA OF 12,000 S.FT. OR GREATER.  
**WE ARE USE GROUP U [WHICH IS NOT LISTED]**

**AN AUTOMATIC SPRINKLER SYSTEM IS NOT REQUIRED**

#### 2. SECTION 920.0 FIRE EXTINGUISHERS

**SHALL BE INSTALLED IN ACCORDANCE WITH  
NFIPA-10**

### B] CHAPTER 6 TYPES OF CONSTRUCTION

#### TABLE 602 FIRE RESISTANCE RATINGS OF STRUCTURAL ELEMENTS

- 1. WALLS - LOAD BEARING - 0 HOUR
- 2. FIRE WALLS AND PARTY WALLS - [N/A]
- 3. ENCLOSURE OF EXITS – [N/A]  
MIXED USE AND FIRE AREA SEPARATION - AS PER TABLE 313.1.2 [N/A]  
  
OTHER SEPARATION ASSEMBLIES = [N/A]
- 4. FIRE PARTITIONS – [N/A]
- 5. SMOKE BARRIERS - [N/A]
- 7. OTHER NON-LOAD BEARING = [N/A]
- 8. INTERIOR LOAD BEARING WALLS, PARTITIONS, COLUMNS AND GIRDERS[ N/A]
- 9. STRUCTURAL MEMBERS SUPPORTING WALLS = 0 HRS
- 10. FLOOR CONSTRUCTION = 0 HRS
- 11. ROOF CONSTRUCTION = 0 HRS

C] **CHAPTER 10 MEANS OF EGRESS**

TABLE 1006.5 LENGTH OF TRAVEL

USE GROUP U IS NOT LISTED

**SECTION 1010.1 NUMBER OF MEANS OF EGRESS:**

TABLE 1010.2: 500 OR LESS REQUIRE TWO EXITS

**1023.0 EXIT SIGNS AND LIGHTS;**  
ARE IN PLACE

**1024.0 MEANS OF EGRESS LIGHTING:**  
EMERGENCY LIGHTS ARE IN PLACE

**SIEGFRIED PORTH**  
**ARCHITECT**

MASSACHUSETTS FARM BUREAU FEDERATION, INC.

*"The Voice of Agriculture"*



One Cheam Street • Ashland, MA 01921 • Phone: 603-881-1766 • Fax: 603-881-1768 • Email: staff@massfarmbureau.com

June 12, 2008

State Building Code Appeals Board  
Commonwealth of Massachusetts  
One Ashburton Place, Room 1301  
Boston, MA 02108

To Whom It May Concern:

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The Nourse Farm situation appears clear-cut to the Farm Bureau. The building expansion is agricultural under zoning, and agricultural under the building code. As such it enjoys the agricultural exemption in the code.

We urge the Board to review the Nourse Farm case, and overturn the erroneous decision made by the Building Inspector.

Sincerely,

Douglas P. Gillespie  
Executive Director

cc. Michael J. Duval, Esquire  
Tim Nourse, Nourse Farm  
Robert Ritchie, Esquire, MA Department of Agricultural Resources

Use or Occupancy Group Classifications  
of  
Agricultural Buildings

NOURSE FARMS

Analysis for Determination of Merits for  
Appealing the Local Inspector's Order

Attorney Michael J. Duval  
12 Deer Run  
Holyoke, MA 01040  
(413) 455-7692

June 7, 2008

## ISSUES

- 1) Determination of Use or Occupancy Classification for Addition, (building permit numbers 38268-B and 38224-B), and existing agricultural barn, pursuant to the Massachusetts State Building Code, 780 CMR sixth edition.
- 2) Determine of whether Local Inspector properly applied the classification standard required in 780 CMR 302.1.
- 3) Determine of whether Local Inspector's Order, denying the issuance of a Certificate of Use and Occupancy, warrants an appeal to the State Building Code Appeals Board.

## SOURCES OF INFORMATION

Mr. Timothy M. Nourse, President  
Nourse Farms  
41 River Road  
Whately MA 01093

Mr. James A. Cerone, Local Inspector  
Franklin County Inspection Program  
425 Main Street, Suite 25  
Greenfield, MA 01301-3313

Mr. Siegfried Porth, Architect, A.I.A.  
116 Pleasant Street, Suite 3404  
Easthampton, MA 01027

Board of Building Regulations and Standards  
One Ashburton Place, Room 1301  
Boston, MA 02108

Mr. Michael W. Schafer, P.E., President  
Schafer Engineering Associates  
1885 State Street  
Schenectady, NY 12304

Mr. Reid McManis, Architect,  
The Dennis Group, LLC  
1391 Main Street  
Springfield, MA 01103

Building Inspection Records from the Franklin County Cooperative Inspection Program

Massachusetts General Laws Annotated, (Statutes, Regulations & Case Law)

Massachusetts, State Building Code, Sixth and Seventh Editions,

Email and Correspondence records of Timothy Nourse

## HISTORY

Roger Lewis began a strawberry nursery in Andover MA, in 1932. The Nourse family purchased the nursery in 1968 and moved its base of operations to its present location in Whately, MA. Over the years the farm has expanded its operations and now offers more than 75 varieties of small fruit plants, plus asparagus, horseradish and rhubarb. The Nourse family grows many varieties of strawberries, blueberries, raspberries, and other fruit which are marketed through "pick your own", and/or sold to roadside stands and supermarkets from mid-June to early October.

The Nourse family also provides top quality plants to Commercial growers and home gardeners alike. They use state of the art scientific methods to detect disease and eliminate plant viruses. All of the plants originate from tissue cultures where tips are cut from virus-free stock and put on a growing medium containing all of the necessary requirements for plant growth. As they grow, the plantlets are divided and placed in an environmentally controlled growth room. When the plantlets reach the proper age, they are moved into greenhouses to develop. After many weeks in the greenhouses, the plants, (plugs) are removed from the greenhouses and planted in the farm's fields. After one growing season, the live berry plants are harvested and cooled in refrigerated storage so they can enter a dormant stage. Once dormant, the plants are sorted, graded, and packaged in cardboard boxes for shipments complying with customer orders.

Over 18 million small plants are grown in their nursery each year and they are now shipping 2,000% more product than when the nursery was founded. As the demand for plants and berries grew over the years the Nourse family has added to their collection of greenhouses, coolers, packing barns, labor living quarters, and other miscellaneous structures in order to keep pace with the high volume of plants it was growing and shipping. The present analysis pertains to the construction of two additions made to the packing barn in 2000 and 2007.

Building Inspection Records from the Franklin County Cooperative Inspection Program indicate that on November 1, 2000, Tim Nourse submitted an application for a building permit to construct a 3,600 square foot addition to an existing building at the farm, (permit # 27028-B.) Inspection records indicate that construction continued into 2001, but there is no record of a final inspection or certificate of occupancy having been issued.

On November 14, 2000, Tim Nourse submitted an application for a building permit to change some interior partitions in the company offices, which are also located in the same building undergoing expansion. The application was signed by the Inspector of Buildings on November 16, 2000 and permit # 27071 was issued. The final inspection for this permit was conducted on February 22, 2002 and a Certificate of Use and Occupancy was issued on April 1, 2002.

The next permit activity for this building occurred on April 27, 2004. Mary Nourse submitted an application to re-roof this barn with a fabrial roof system. Permit # 32393-B was issued, the building re-roofing completed and a Certificate of Use and Occupancy was issued on June 18, 2004, (Certificate Number 32393-CO.)

On November 8, 2007, Local Inspector James Cerone sent an email to Michael Schafer, P.E. of Schafer Engineering and Associates indicating that, "Norm Young was in the office this morning, inquiring about submittals for the Nourse Farms expansion. As the building contains more than 35,000 cu. Ft., we're looking for controlled construction." On November 9, 2007, Inspector Cerone sent an email to Mr. Schafer, stating that, "it will be important to have existing building evaluation (ch. 34) as part of the code compliance info."

The application, for a barn addition, was signed by the Conservation Commission on November 9, 2007 and the Local Inspector on November 19, 2007. The permit, (number 38224-B), was limited to "FOUNDATION ONLY for barn addition."

Separate conversations with Local Inspector Cerone, Engineer Schafer, and Architects McMannis and Porth all confirm that disagreement in the interpretation of the Building Code has delayed the Nourse farm building expansion. Inspection records indicate that on November 27, 2007, Inspector Cerone told Mr. Schafer that the building expansion appeared to be in an F1, (factory), Use Group. Correspondence, later that day, from Mr. Schafer to Mr. Nourse, also indicates that when Mr. Schafer was unable to obtain approval of an official building permit without a completed building code review.

On December 23, 2007 Mr. Schafer sent Inspector Cerone a building code review of the proposed Nourse farm building expansion project. In accordance with the Inspector's request the code review was preformed with the assumption that the addition would be in an F1, (factory) Use Group Classification. Mr. Schafer later confirmed that this was done in an effort to gain the Local Inspector's acceptance of the building permit application and to continue the building expansion construction which had already begun.

On January 8, 2008, a building permit for the structural addition was issued by the Local Inspector, (permit no. 38268-B). Although the application indicates that the addition was an "Agricultural Barn", the permit was to construct an "addition to factory." The permit itself does not identify the "Use Group" classification of the addition, however the permit transmittal letter indicated that a Use Group of F1. The transmittal letter also states conditions: "details for firewall & exterior wall ratings submitted by engineer."

Inspection records indicate that the addition passed inspection requirements for the foundation, (12/10/07 and 12/14/07), framing, (02/20/08), and insulation, (04/02/08).

Architect Siegfried Porth, A.I.A. prepared a building code analysis, in April 2008, in accordance with the requirements of 780 CMR 3400. His analysis concluded that the Nourse farm addition was a Use Group Classification "U" for an agricultural building.

On May 9, 2008 the Local Inspector issued a letter regarding the Building Code Analysis submitted by Siegfried Porth. In the letter he states that he "cannot accept the "Utility" use group classification." The Inspector further states that, "[w]e are all in agreement that, whereas the term agricultural would apply to any zoning regulations regarding this structure, the Building Code Classification would be Factory, (F1) and Storage, (S1) . . . . Consequentially, a Certificate of Use and Occupancy will not be issued . . ."

## ANALYSIS

**ISSUE 1. Determination of Use or Occupancy Classification for Addition, (building permit numbers 38268-B and 38224-B), and existing agricultural barn, pursuant to the Massachusetts State Building Code, 780 CMR sixth edition.**

The issue of Use Group Classification is determinative of whether or not the Nourse farm building, as constructed, complies with the requirements of the State Building Code, sixth edition. Local Inspector Cerone believes that this is a primarily an (F1) factory building, (which is also being used for storage and offices). The Architects believe that this is a (U) agricultural building and therefore exempt from many of the requirements which the Local Inspector cites as grounds for his denial for issuing an Occupancy permit.

The State Building Code, sixth edition, regulation for classification of a building into a particular Use or Occupancy Group is found at 780 CMR 302.1:

“All structures shall be classified with respect to occupancy in one or more of the use groups listed below.”

780 CMR 302.1 lists 10 separate Use Groups, including; “Factory”, “Storage”, and “Utility and Miscellaneous” which are then detailed in the subsequent code sections.

### **Local Inspector’s Use Group Classification**

The Local Inspector has explained his belief that the Nourse farm building addition best fits the language of 780 CMR 306.1 for Factory and Industrial Use Groups. He has determined the building’s Use to be a Factory because Nourse farm-workers are “assembling or processing products” in the building. He also believes that part of the building fits the Classification of an (S1) Storage Use Group because the berry bushes grown at the Nourse farm were packed in cardboard boxes and placed in refrigerated storage coolers, in the building, until they are shipped. This combination of occupancies thereby creates a “Mixed Use Group” situation governed by 780 CMR 313.0. This in turn requires compliance with various other code sections, (Fire Resistance Rating Requirements for Fire Separation, 780 CMR table 313.1.2; Fire Resistance Rating Requirements of Structural Elements, 780 CMR table 602; Height and Area Limitations, 780 CMR table 503; Fire Protection System Requirements, 780 CMR 904.2, and; Means of Egress, 780 CMR 1006.5).

Inspector Cerone determined that (U), Utility Use Group was not applicable in this case because the Nourse farm building was not “of an accessory character” as defined in the language of 780 CMR 312.1, but rather was the main building on the farm. The Inspector also dismissed the argument that the building was an “agricultural building” as identified in 780 CMR 312.1. He believes that the term agricultural would only apply to zoning regulations regarding this structure.



## **“Agricultural” and “Farming” as applied to the State Building Code, Sixth Edition,**

Note: The State Building Code is currently undergoing a revision. The proposed seventh edition has been made effective only for “One and Two Family Dwellings.” The seventh edition of the Basic Building Code has not been approved or made effective, (as of May 2008). The proposed seventh edition is based on the International Building Code, however there are significant Massachusetts modifications including the addition of entire chapters specific to Massachusetts. The Nourse building permit application for the addition was filed in November 2007 and made pursuant to the State Building Code sixth edition.

The Local Inspector’s classification of the Nourse farm building as a Factory is partially based on his limitation of the term “agricultural buildings” used in 780 CMR 312.1. His limitation and restriction in the scope of this term is derived from sources outside of the sixth edition of the Code since the terms, “agriculture” or “agricultural buildings” are not specifically defined in the State Building Code, sixth edition. The Inspector writes in his letter dated May 9, 2008 that he consulted with a code consultant from the International Code Council. The International Code has a definition for “agricultural, building”, and that definition has been proposed for inclusion in the seventh edition to the Building Code. However, as of this date, the proposed seventh edition has not been ratified or made effective in the Commonwealth, and therefore is not controlling in this case.

The sixth edition provides guidance for dealing with conflicting language by stating that in Massachusetts “law is superior to regulation.”

“The *Sixth Edition* of the Massachusetts State Building Code is based on the provisions of the 1993 BOCA National Building Code. However, since significant changes have been made to the national code, the *Sixth Edition* is considered a unique document to the Commonwealth. One should not assume that the two documents are compatible. . . In some instances, requirements of Massachusetts General Laws (M.G.L.) conflict with provisions of the national code. Since law is superior to regulation, the national code must be stripped of any conflicting language.

Therefore, the statutes and decided case law are consulted to find the accepted definitions of “agriculture” or “farming.” This will provide us with a framework for determining whether the Nourse addition and building meets the requirements of an “agricultural building” as referenced in 780 CMR 312.1.

Massachusetts Case Law regarding the definitions of agriculture and farming dates back many years. “The word “farm” . . . should be given its commonly understood significance as land used for the production of crops . . . or growing of fruit.” Town of Lincoln v. Murphy, 49 N.E. 2<sup>nd</sup>, 453, Mass., 1943. “The words “agricultural use” . . . were required to be interpreted according to the common and approved usages of language without enlargement or restriction.” Moulton v. Building Inspector of Milton, 43 N.E. 2<sup>nd</sup> 662, Mass., 1942. “A “nursery” . . . is essentially a tree plantation or place where trees, shrubs, plants, and the like, are propagated from seed or otherwise for transplanting, for

use as stock for grafting, and for sale.” “The words “greenhouse” and “nursery” . . . were to be interpreted according to the common and approved usages of language without enlargement or restriction and questions of respective meanings of such terms were matters of law for the court.” Town of Needham v. Winslow Nurseries, Inc., 111 N.E. 2<sup>nd</sup> 453, Mass., 1953.

This adoption of this common sense approach to defining the meaning of terms is referenced in the sixth edition of the State Building Code.

**780 CMR 201.4 Terms not defined:** Where terms are not defined through the methods authorized by 780 CMR 201.0, such terms shall have *the* ordinary accepted meanings such as the context implies.

The terms “Farming,” “Agriculture,” and “farmer” are defined in the Massachusetts Statutes, **Chapter 128: Section 1A.**

Section 1A. “Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, . . . and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

The courts have ruled that ““agriculture” within meaning of statute prohibits zoning ordinance or bylaw from prohibiting, unreasonably regulating, or requiring special permit for use, expansion, or reconstruction of structure for primary purpose of agriculture, even though Department of Public Health, rather than Department of Agriculture, regulated . . . and even though . . . could become industrial or business use when removed from agricultural setting.” Modern Continental Construction Company, Inc. v. Building Inspector of Natick, 674 N.E. 2<sup>nd</sup> 247, Mass.App.Ct., 1997. This case is especially instructive because it illustrates that the statute is applicable to situations under the regulatory authority of the Department of Public Health as well as the Department of Agriculture. In Massachusetts the Building Regulations and Standards fall within the Department of Public Health.

Regulatory decisions of the Executive Office of Public Safety’s Automatic Sprinkler Appeals Board have also specifically cited the applicability of M.G.L. c. 128 s. 1A when agricultural based enterprises are involved. “the Board finds that the proposed subject building, as it has been described at the hearing is not subject to the requirements of M.G.L. c. 148, s. 26G, since its current intended use brings it within the agricultural exemption found in the statute. Specifically, such exemption includes, “Buildings used for agricultural purposes as defined in section one A of chapter one hundred and twenty-eight.” Decision of the Automatic Sprinkler Appeals Board RE: Windkist Equestrian Centre, Inc v. North Andover Fire Department, Docket # 07-11, (2007).

When the Nourse farming activities are considered in light of the above Massachusetts case law, statutes and regulatory decisions, it appears that the Nourse use and occupancy of this building clearly fits within the scope of the definitions for farming and/or agricultural.

**Applicable Provisions of the State Building Code, Sixth Edition, (All regulations in effect on May 2, 2008), Regarding "Agricultural" and "Farming" buildings.**

Agricultural buildings are clearly and specifically listed in the Use Group Classifications of the State Building Code, sixth edition.

**780 CMR 312.0 UTILITY AND  
MISCELLANEOUS USE GROUP**

**312.1 General:** Buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to conform to the requirements of 780 CMR commensurate with the fire and life hazard incidental to their occupancy. Use Group U shall include fences over six feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as *private garages*, carports, sheds and agricultural buildings.

The other reason given by the Local Inspector for not including the Nourse farm building within the "U" Use Group is because it is not of an "accessory character." The accuracy of this interpretation can also be tested by the common usage of language approach.

**780 CMR 200 DEFINITIONS**

**Accessory structure:** A building, the occupancy of which is incidental to that of the main building, that is located on the same lot as the main building.

The term "incidental" is specifically not defined in the Code. The definition provided by the Random House College Dictionary is hereby provided as evidence of its commonly understood meaning. "Incidental," *adj.* 1. happening or likely to happen in fortuitous or subordinate conjunction with something else." Applying this definition to the accessory structure provision in the Code and we get a building that's functional use is subordinate to another building on the same property.

When the entire agricultural operation conducted at the Nourse farm is considered, the use of the building at issue is only a small part of the larger agricultural process. The building is used to pack the young plants in boxes and store them in refrigerated coolers until they are shipped. These activities are dependant upon, (and therefore subordinate to), the growing processes which begins in the tissue lab, and continues in greenhouses and the planting fields.

Therefore, the Nourse farm building appears to meet all of the criteria for classification as a "U" Utility Use Group building in the State Building Code, sixth edition.

## **ISSUE 2 Determine if whether Local Inspector properly applied the classification standard required in 780 CMR 302.1.**

When the Local Inspector stated in his letter, dated May 9, 2008 that he “cannot accept the “Utility” use group classification” classified the Nourse building as “Factory (F1) and Storage (S1).” This classification contradicts the building code analysis prepared by architect Siegfried Porth who concluded that the proper classification was Utility (U). The Inspector dismisses the argument that the Nourse agricultural activities are determinative of the issue of Use Group Classification. The State Building Code, sixth edition, contains a standard to be used when classifying a building when the proposed use is not specifically provided for in the ten designated groups identified in 780 CMR 303 through 312.

### **780 CMR 302.1**

“... Where a structure is proposed for a purpose which is not specifically provided for in 780 CMR, such structure shall be classified in the use group which the occupancy most nearly resembles.”

To meet this requirement a determination must be made as to which use and occupancy the Nourse building most nearly resembles. Comparison of the Factory, Storage and Utility Group requirements relative to the proposed Nourse building activities reveals that the Utility Use Group “most nearly resembles” the occupancy of Nourse farming activities.

## **780 CMR 306.0 FACTORY AND INDUSTRIAL USE GROUPS**

The Local Inspector has classified the building as an (F1) factory because he believes that the packing of berry bushes in the building constitutes “assembling or processing of products or materials” as provided in 780 CMR 306.1.

**306.1 General:** All structures in which occupants are engaged in work or labor in the fabricating, assembling or processing of products or materials, shall be classified as Use Group F-1 or F-2. This includes, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing occupancies. The term “Use Group F” shall include Use Groups F-1 and F-2.

The terms “fabricating”, “assembling” and “processing” are not defined in the Code. 780 CMR 201.4 provides that in such situations the undefined terms shall have the ordinary accepted meanings such as the context implies. The definitions provided in the Random House College Dictionary for these three terms reveals that they do not include activities such as “packing” or “storage” in their meanings. As previously stated, the activities being conducted in the Nourse building are the “packing, and “storage of live plants” before shipping. These activities are not equivalent to “fabricating, assembling or processing of products or materials” as required in 780 CMR 306.1.

The F1 Use Group is a sub-category of the Factory Group and is distinguished by an occupancies’ relative risk of hazard.

**306.2 Use Group F-1 structures:** Factory and industrial occupancies which are not otherwise classified as low-hazard, Use Group F-2, shall be classified as a moderate-hazard factory and industrial occupancy, Use Group F-1. The manufacturing processes listed in Table 306.2 are indicative of and shall be classified as Use Group F-1.

**Table 306.2  
MODERATE-HAZARD FACTORY AND  
INDUSTRIAL OCCUPANCIES**

Aircraft	Film, photographic
Appliances	Food processing
Athletic equipment	Furniture
Automobiles and other motor vehicles	Hemp and jute products
Bakeries	Laundries
Beverages, alcoholic	Leather and tanneries, excluding enameling or jappanning
Bicycles	Machinery
Boat building	Millwork and woodworking, wood distillation
Boiler works	Motion picture and television filming
Brooms or brushes	Musical instruments
Business machines	Optical goods
Cameras and photo equipment	Paper mills or products
Canneries, including food products	Plastic products
Clothing	Printing or publishing
Condensed and powdered milk manufacture	Recreational vehicles
Construction and agricultural machinery	Refuse incinerators
Disinfectants	Shoes
Dry cleaning using other than flammable liquids in cleaning or dyeing operations or other than classified in 780 CMR 307.0	Soaps and detergents
Electric light plants and power houses	Sugar refineries
Electrolytic reducing works	Textile mills, including canvas, cotton, cloth, bagging, burlap, carpets and rags
Electronics	Tobacco
Engines, including rebuilding	Trailers
	Upholstery and manufacturing shops

The Inspector conceded that there was no specific occupancy on the list which specifically related to the activities conducted in the Nourse farm building. He felt that occupancies listed in Table 306.2 were general and provided a guide for Inspectors to use when classifying certain occupancies not specifically identified in the Code.

The occupancies of growing and shipping of live plants are not listed in Table 306.2. The F1 Moderate Hazard Use Group Table lists a few occupancies involving agricultural products, (such as tobacco, sugar refining, and food processing.) Of those listed, clear distinctions can be recognized between food processing or refinement activities and the growing and shipping of live plants. Table F-1, in Appendix F of the Code contains a more detailed guide for users of 780 CMR to determine hazard index numbers and use groups for various types of occupancies. A thorough review of Table F-1 also illustrates that there are no Utility (U) or Miscellaneous Use Group occupancies on the list. Nor are there any uses which involve to the growing and shipping of live plants.

The conclusion drawn from these Code sections is that growing berry bushes from tissue cultures and shipping the live, (dormant), plants does not fit into F1 Factory or Industrial Use Classification. As discussed in Issue 1 above the Code specifically provides language for including agricultural buildings in its Utility (U) and Miscellaneous Use Group. Therefore, if classification of the Nourse building becomes a choice of either the Factory (F1) or a Utility (U), then structure must be classified in the Utility (U) use group because (U) "most nearly resembles" the occupancy of the Nourse farms building.

## 780 CMR 311.0 STORAGE USE GROUPS

The Inspector has not cited any specific Code sections to support his classification of that part of the building which he considered Storage (S1). The requirements for Storage are:

**311.1 General:** All structures which are primarily used for the storage of goods, wares or merchandise shall be classified as Use Group S-1 or S-2. This includes, among others, warehouses, storehouses and freight depots. The quantity of *hazardous materials* in storage shall comply with 780 CMR 307.8. The term "Use Group S" shall include Use Groups S-1 and S-2.

**311.2 Moderate-hazard storage, Use Group S-1:** Buildings occupied for the storage of moderate-hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or *explosives* including, among others, the materials listed in Table 311.2, shall be classified as Use Group S-1. A motor vehicle repair garage is that portion of a property wherein major repairs, such as engine overhauls, painting or body work, are performed on motorized vehicles.

**Table 311.2  
MODERATE-HAZARD STORAGE OCCUPANCIES**

Bags, cloth, burlap and paper	Linoleum
Bamboo and rattan	Livestock shelters
Baskets	Lumber yards
Belting, canvas and leather	Motor vehicle repair garages
Books and papers in rolls and packs	Petroleum warehouses for storage of
Boots and shoes	lubricating oils with a flash point of
Buttons, including cloth covered, pearl or bone	200°F or higher
Cardboard and cardboard boxes	Photo engraving
Clothing, woolen wearing apparel	Public garages (Group 1) and stables
Cordage	Silk
Furniture	Soap
Furs	Sugar
Glue, mucilage, paste and size	Tobacco, cigars, cigarettes and snuff
Horn and combs, other than celluloid	Upholstering and mattress manufacturing
Leather, enameling or japanning	Wax candles

The items being stored in the Nourse refrigerated rooms are live berry bushes, (packed in cardboard boxes and stacked on wooden pallets.) The fact that Table 311.2 includes the storing of cardboard and cardboard boxes should not be considered equivalent to storing items packed in cardboard boxes.

The Inspector also believes that part of the building is Storage (S1) because the packed berry bushes are, in fact stored in the building. The Inspector feels that this is a 780 CMR 313.0 Mixed Use Group situation and that additional fire protection and height and area limitations must apply.

**313.1 Two or more use groups:** Where a building is occupied by two or more occupancies not included in the same use group, the building or portion thereof shall comply with 780 CMR 313.1.1, 313.1.2 or 313.1.3 or with combinations of 780 CMR 313.1.1, 313.1.2 and 313.1.3 . .

**313.1.1 Nonseparated use groups:** Each portion of the building shall be individually classified as to use. The required type of construction for the building shall be determined by applying the *height* and *area* limitations for each of the applicable use groups to the entire building. The most restrictive type of construction, so determined, shall apply. The other requirements of 780 CMR shall apply to each portion of the building based on the use group of that occupancy except that the most restrictive applicable provisions of 780 CMR 403.0 and 780 CMR 9 shall apply to these nonseparated use groups. A *fire separation assembly* is not required between use groups, except as required by other sections of 780 CMR.

**313.1.2 Separated use groups:** Each portion of the building shall be individually classified in a use group and shall be completely separated from adjacent *fire areas* by fire separation assemblies (see 780 CMR 709.0) and floor/ceiling assemblies (see 780 CMR 713.0) having a fire resistance rating determined in accordance with Table 313.1.2, for the use groups being separated. Each *fire area* shall comply with the code based on the use group of that space. Each *fire area* shall comply with the *height* limitations of 780 CMR 503.0 based on the use of that space and the type of construction classification. In each story, the *building area* shall be such that the sum of the ratios of the floor *area* of each use group divided by the allowable *area* from 780 CMR 503.0 for each use group shall not exceed one.

However, the storage of packed plants is not the primary purpose for the Nourse building. Storage is incidental to the larger agricultural processes of growing plants and getting them to market. The requirements of 780 CMR 302.1.1 control in this situation.

**302.1.1 Specific occupancy areas:** Specific occupancy areas which are incidental to the main use group shall be separated and protected in accordance with Table 302.1.1 and shall be classified in accordance with the main use group of the portion of the building in which the specific occupancy area is located.

As indicated above, Utility (U) most closely resembles the agricultural activities being conducted in the Nourse building and is the building's main use group. A review of Table 302.1.1 indicated that the Use Group U is not listed where the requirements of storage rooms are listed. Table 313.1.2, "Fire resistance Rating Requirements for Fire Separation Assemblies between Fire Areas", specifically states that the U use group is

“Not Applicable.” Table 503, “Height and Area Limitations of Buildings”, specifically states that “U Utility, miscellaneous” buildings are “Not Limited.”

Therefore, the existing building and the addition for expansion are in compliance with the above listed requirements for an agricultural, (U) Use Group Classification. The existing farm building has operated in accordance with this premise for many years and the addition thereto, should be classified at the same standard.

**ISSUE 3 Determine of whether Local Inspector’s Order, denying the issuance of a Certificate of Use and Occupancy, warrants an appeal to the State Building Code Appeals Board.**

As mentioned in the History section above, on November 8, 2007, the Local Inspector made a determination that the Nourse farm building contained more than 35,000 cu. Ft., and was subject to the controlled construction regulations of the Building Code. On November 9, 2007, he requested that the project engineer prepare an existing building evaluation prepared pursuant to Chapter 34. On November 27, 2007, the Local Inspector instructed the project engineer that the building expansion appeared to be in an F1, (factory), Use Group and that approval of an official building permit would not occur without a completed building code review.

There are many differences between the Code requirements of a “U” and an “F1” or “S1” Use Group classifications for a building, including the following:

Fire Resistance Rating Requirements for Fire Separation, 780 CMR Table 313.1.2;  
Fire Resistance Rating Requirements of Structural Elements, 780 CMR Table 602;  
Height and Area Limitations, 780 CMR Table 503;  
Fire Protection System Requirements, 780 CMR 904.2, and;  
Means of Egress, 780 CMR 1006.5.

On December 23, 2007 the project engineer sent the Local Inspector a building code review of the proposed Nourse farm building expansion project. In accordance with the Inspector’s request the code review was preformed with the assumption that the addition would be in an F1, (factory) Use Group Classification. The Engineer made design changes that met the F1 building requirements.

In April 2008 a building code analysis and inspection of the project by architect Siegfried Porth, A.I.A. revealed that the building, as constructed, was in compliance with and in many aspects, exceeded the safety requirements for its purposed occupancy as a (U) User Group Occupancy. The architect felt that the additional requirements being demanded by the Local Inspector pertaining to an F1 Use Group Classification were excessive, not required by the Code, placed a large and unjustified financial burden on Mr. Nourse.



On May 9, 2008 the Local Inspector refused to accept the conclusions submitted by Architect Siegfried Porth regarding these matters because of his "U" use group classification. He also refused to issue a Certificate of Use and Occupancy on the Nourse building "until [he] receive[s] details that comply with 780 CMR for the fire wall and exterior wall ratings from an architect or engineer registered in the State of Massachusetts and that these walls are constructed or modified in accordance with those details."

A review of the applicable Code sections indicates that the Inspector's demands are not required in this case.

**780 CMR 116.0 REGISTERED  
ARCHITECTURAL AND  
PROFESSIONAL ENGINEERING  
SERVICES - CONSTRUCTION CONTROL**

**"116.1 General:** The provisions of 780 CMR 116.0 define the construction controls required for all *buildings* and *structures* needing registered architectural or registered professional engineering services, and delineate the responsibilities of such professional services together with those services that are the responsibility of the contractor during construction.

The following structures are exempt from the requirements of 780 CMR 116.0;

- 1) Any *building* containing less than 35,000 cubic feet of enclosed space, measured to the exterior surfaces of walls and *roofs* and to the top of a ground supported floor, or in the case of a crawl space, to the bottom surface of the crawl space. In the case of basement floors or levels, the calculation of enclosed space shall include such spaces.
- 2) Any single or two family dwelling or any accessory *building* thereto;
- 3) Any *building* used exclusively for farm purposes (this exemption does not apply if the building is to be used for large assemblies of people or uses other than farm purposes). . . "

The Local Inspector was correct in stating that the building contained more than 35,000 cubic feet of enclosed space. However, he failed to apply the farming exemption of the regulation. The "controlled construction" requirement in 780 CMR 116, is not applicable to the Nourse Farms building expansion because the building is being used exclusively for farming, (as defined in the Massachusetts Statutes and Case Law discussed above.)

The Local Inspector's requirement for a building evaluation pursuant to Chapter 34, is also not applicable to the Nourse Farms building expansion because these evaluations are limited to work subject to 780 CMR 116,

**3402.1.1 Investigation and evaluation:** For any proposed work regulated by 780 CMR 34, which is subject to 780 CMR 116, as a condition of the issuance of a building permit the building owner shall cause the *existing building* (or portion thereof) to be investigated and evaluated in accordance with the provisions of 780 CMR 34 (see Appendix F).

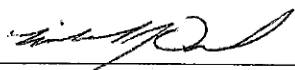
The Architect's Building Code Analysis, submitted in April 2008 identified the building's Use Group Classification as (U) Utility. He reaches the same conclusion as was achieved in this analysis, (albeit for reasons not discussed in his document). His Code analysis also provides the Local Inspector with all of the information demanded in his letter dated May 9, 2008.

## CONCLUSION

After careful review of the facts made available to me during my research I have concluded as follows:

1. The appropriate Use Group Classification for the Nourse Building is Utility and Miscellaneous (U).
2. The 780 CMR 116 Controlled Building and 780 CMR Chapter 34 Evaluations and Investigations are not required for the Nourse building and its addition.
3. The Certificate of Use and Occupancy should be issued, (assuming all other requirements for a Utility Group building have been met and pass final inspection.)
4. An Appeal to the State Building Code Appeals Board should be filed in the event that the Local Inspector, once having reviewed this document, fails to issue the Certificate of Occupancy.

DATE: JUNE 7, 2008

  
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